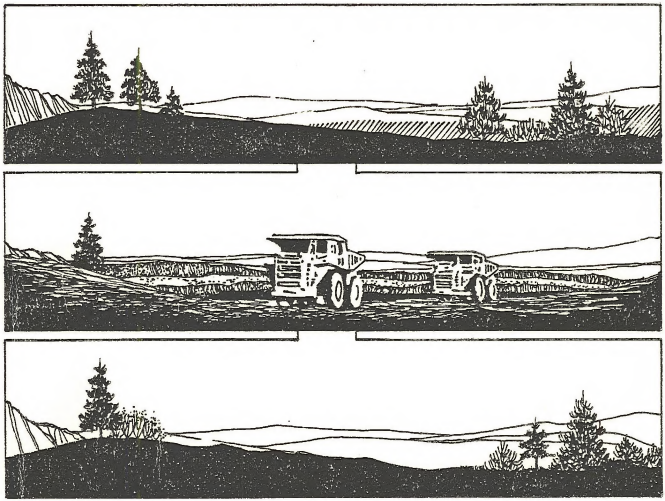
# RECLAMATION BONDING

## PERTAINING TO BLM MINING CLAIMS



BUREAU OF LAND MANAGEMENT
BONDING TASK GROUP REPORT
APRIL 1987

# REVIEW OF THE LOCATABLE MINERALS SURFACE MANAGEMENT PROGRAM AND ITS BONDING POLICY



TASK GROUP REPORT

APRIL 1987

TABLE OF CONTENTS

# EXECUTIVE SUMMARY

The Federal Land Policy and Management Act of 1976 (FLPMA) has provided authority for the management, protection, development, and enhancement of the public lands. Section 302(b) of FLPMA included provisions for the development of regulations to prevent unnecessary or undue degradation of the public lands from operations conducted pursuant to the Mining Law of 1872. Section 603(c) of FLPMA also provided for the development of regulations to manage mining and other uses within wilderness study areas. Regulations implementing these sections of FLPMA (43 CFR 3802 and 3809) were finalized in 1980 and established procedures to manage operations conducted on public lands pursuant to the Mining Law of 1872. These regulations on public lands pursuant to the Mining Law of 1872. These regulations included provisions for bonding of certain operations. The Bureau of Land Management (BLM) has established additional policy guidance on the implementation of the bonding provisions of the regulations.

The BLM established a Mining Claim Bonding Task Group to review the existing bonding policy and evaluate the use of bonding in preventing noncompliance by operators conducting operations pursuant to the 43 CFR 3802 and 3809 surface management regulations. This task group conducted a review of the surface management program in various BLM district offices to develop projections of the Bureau's overall situation regarding surface management noncompliance and to determine the effectiveness of the existing bonding policy.

Analysis of the information available from selected offices indicates that Bureauwide, at least 90% of the approximately 14,100 operations conducted on public lands since 1981, have been in compliance with the surface management regulations. Projections indicate that Bureauwide about 560 operations may involve abandoned operations where the operator has failed to complete reasonable reclamation under the surface management regulations. It is estimated that the total acres of unreclaimed surface disturbance associated with these operations is about 2,900 acres. This represents approximately 6% of the total acreage involved in all plans and notices filed with BLM under the surface management regulations. There have been very few identified abandoned operations which have caused major undue or unnecessary degradation, and resource damage appears to be generally limited to erosion, visual impacts, and safety.

Several alternatives to the existing bonding policy were considered by the Mining Claim Bonding Task Group to deal with those noncompliance problems that do exist and to ensure the reasonable reclamation of public lands disturbed by operations conducted under the Mining Law of 1872. These alternatives included increased compliance and public awareness, penalties, mandatory bonding, limited bonding, reclamation fund, and BLM/State cooperative agreements.

Based on the findings and analysis conducted by the task group, the following recommendations are provided:

1) The Bureau's existing bonding policy should be revised to provide flexibility to the individual State Directors for selective bonding of plans of operations. The State Directors are also encouraged to utilize the provisions of 43 CFR 3809.3-2(e) to require bonding of notice-level operations which are in noncompliance.

2) The Bureau's current regulations concerning reclamation bonding should be modified to allow discretion regarding the types of bonds deemed acceptable under the surface management program.

3) The Bureau should increase the intensity of its inspection and enforcement program for the 43 CFR 3802 and 3809 surface management programs.

4) The Bureau's 3802 and 3809 surface management training programs should be reviewed and revised in accordance with the program directions and modifications resulting from the other task group recommendations.

5) The Bureau should consider modifying the existing surface management regulations (3809.1-4) to provide authority to require a Plan of Operations on certain specific types of operations or special management areas that are highly sensitive or have key resource values.

I. ISSUE STATEMENT

Is the Bureau of Land Management's surface management program and bonding policy effective in preventing unnecessary or undue degradation and ensuring reasonable reclamation of the public lands disturbed by operations conducted under the Mining Law of 1872, as amended.

II. BACKGROUND

A. Discussion of the Issue

The focus of this issue is BLM's effectiveness in preventing unnecessary or undue degradation resulting from surface disturbance activities authorized under the Mining Law of 1872 as amended. It should be recognized that any action under the mining law may mature to various levels of exploration and development. In order to provide a perspective of the Bureau's surface management responsibilities under the mining law the following information is provided.

Approximately 660,000 mining claims are currently located on BLM administered lands and cover approximately 13.2 million acres (assuming 20 acres per mining claim). Since the 1981 implementation of the 43 CFR 3802 regulations, approximately 14,100 plans or notices have been filed with BLM. Based on field office estimates, these notices and plans involved a total disturbance of approximately 45,000 acres. This total surface acreage of disturbance represents less than 1% of the total acreage of BLM administered land under mining claim location. It is estimated that approximately 60% of these total number of operations are still active.

The balance of this report will focus on management issues pertinent to BLM-administered lands involving locatable mineral activities. Review of information from a selected sample of offices will provide insights for potential or actual management improvements in the surface management program.

B. GAO Report

The U.S. General Accounting Office (GAO) issued a report in March 1986 which was critical of the Bureau's surface management program and bonding policy (Appendix A). The report entitled "Interior Should Ensure Against Abuses from Hardrock Mining" recommended that decisions on whether to require reclamation bonds, be based on the significance of land disturbance likely to result from mining operations. The GAO also recommended that mine operators be required to post a bond in an amount large enough to cover the estimated costs of reclamation. The GAO contends that bonding is justified by the need to assure that mined lands will be reclaimed by the operator and not at public expense.

The Bureau, in response to these issues, established a Bonding Task Force to review the bonding policy. Specific direction to the Bureau was also provided by language in the FY 87 Appropriations Conference Report (Appendix B). The Bureau was directed to examine operations conducted under the Mining Law of 1872 on public land with specific emphasis on the adequacy and necessity of reclamation bonding and to provide a progress report to Congress no later than May 1, 1987.

C. BLM Task Force

A Mining Claim Bonding Task Force was established in October 1986 to review the current bonding policy for operations conducted under the Mining Law of 1872 (Appendix C). The Task Force was established to evaluate the use of bonding in preventing noncompliance by operators subject to the 43 CFR 3802/3809 surface management regulations. This task force consisted of the following Bureau personnel knowledgeable in the mining law and surface management programs:

Ray Brady (Arizona State Office)- Task Group Chairman
Thomas Lahti (Wyoming State Office)
William Jonas (New Mexico State Office)
David Williams (Butte District Office)
Vernon Stephens (California Desert District Office)
Richard Deery (Washington Office)

The efforts of the Bonding Task Force were accomplished under the direction and guidance of a State Directors' Steering Committee. This Steering Committee consisted of the following members:

Edward Spang (Nevada State Director) (Chairman)
Roland Robison (Utah State Director)
Neil Morck (Colorado State Director)
Michael Penfold (Alaska State Director)
Robert Lawton (Assistant Director, Energy & Minerals)
(ex officio member)
Dan Sokoloski (Deputy Assistant Director, Energy & Minerals)
(ex officio member)

The Bonding Task Force and Steering Committee met at the Denver Service Center on November 17-18, 1986, to discuss the roles, assumptions, and organization of the task force effort. Followup meetings were held on December 16-17, 1986, January 20-22, 1987, and February 3-6, 1987, to discuss and evaluate issues related to surface management and bonding of operations conducted under the mining law, review information related to noncompliance in the surface management program, and prepare a report on the BLM surface management program and bonding policy.

D. Overview of the Bureau's Surface Management Program

The Federal Land Policy and Management Act of 1976 (FLPMA) was enacted to establish guidelines for the administration of public

land policy and to provide for the management, protection, development, and enhancement of the public lands. Section 302(b) of FLPMA provided for the development of regulations to prevent unnecessary or undue degradation of the public lands from operations conducted pursuant to the Mining Law of 1872. Section 303 of FLPMA also provides for civil actions and criminal penalties for violations of any regulations issued to protect the public lands. Section 603(C) of FLPMA provided for the development of regulations to manage mining and other uses within wilderness study areas (WSA) so as not to impair the suitability of such areas for preservation as wilderness.

Regulations implementing Section 302(b) of FLPMA were finalized and published in the Federal Register on November 26, 1980 (effective on January 1, 1981). The 43 CFR 3809 surface management regulations established procedures to manage operations under the mining law in such a manner as to prevent unnecessary or undue degradation of public lands and to provide for reasonable reclamation of surface disturbance.

Regulations implementing Section 603(C) of FLPMA were promulgated and published in the Federal Register on March 3, 1980 (effective on April 2, 1980). The 43 CFR 3802 regulations establish procedures to prevent impairment of the suitability of land under wilderness review and to prevent unnecessary or undue degradation by activities conducted under the mining law.

Where plans of operations are required, bonding to ensure reasonable reclamation is at the discretion of the authorized officer. Bonds may not be required for casual use operations or operations conducted under a notice (disturbance of 5 acres or less) which are nondiscretionary actions. The surface management regulations do not expressly contain criminal penalties, but an operator in noncompliance with these regulations will often be in violation of Section 303 of FLPMA and 43 CFR 8360.

Specific Bureau policy and guidance on implementation of the surface management regulations is provided in BLM Manual 3809 (July 26, 1985). This guidance specifically states that "bonding will not be required of an operator conducting operations under an approved plan, unless a record of noncompliance has been established" (Manual 3809,19).

The surface management regulations divide operations into three levels; casual use--operations which cause negligible surface disturbance, notice--disturbance of 5 acres or less per year, and plan of operations--disturbance of more than 5 acres per and for most operations in WSAs regardless of acreage disturbed. An operation that causes negligible surface disturbance is considered casual use and does not require Bureau notification or approval. A proposed operation that will disturb 5 acres or less per year requires the operator to file a notice with the Bureau describing the location and nature of the operations, the beginning and ending dates, and a statement that the operation will be reclaimed

according to the reclamation standards found in 43 CFR 3809.1-3(d). The Bureau does not approve or disapprove operations conducted under a notice. Since operations under a notice are a non-discretionary action they are not subject to bonding. A proposed operation that will disturb more than 5 acres in a year or is located in a WSA requires the operator to file a detailed plan of operations with the Bureau describing the location and nature of the operation, the beginning and ending dates, and how any surface disturbance will be reclaimed. Operations conducted under a plan of operations require approval, and are therefore subject to discretionary bonding by the authorized officer.

Reclamation of lands disturbed by mining law activities before the effective date of the 43 CFR 3809 surface management regulations (January 1, 1981) is not required under these regulations. The surface management reclamation standards also only require that reasonable measures be taken to prevent undue or unnecessary degradation. These measures include reshaping lands to an appropriate contour and revegetating where necessary. The regulations do not require the restoration of lands to pre-mining conditions.

Bureau field offices have developed procedures to implement and administer the surface management program. Where state reclamation programs exist, several BLM states have developed a memorandum of understanding or cooperative agreement with the local state regulatory agency. Other BLM offices coordinate on an informal basis with their state counterparts.

## III. SURFACE MANAGEMENT PROGRAM EVALUATION

### A. Methodology

The task force conducted a statistical analysis of information related to the surface management program with emphasis on non-compliance. This analysis was based upon a selected survey of eleven BLM district offices in ten different states. The offices were specifically selected in order to determine the effectiveness of different management strategies and to provide a representative sample for projections of Bureauwide estimates.

The survey included offices in states without reclamation laws (Arizona, Nevada, and New Mexico) and states with state reclamation laws (California, Colorado, Idaho, Montana, Oregon, Utah, and Wyoming.) All of the states with reclamation laws require some level of bonding. In addition, BLM offices in those states with reclamation laws have developed memoranda of understanding or cooperative agreements to provide for joint administration of the surface management program.

The survey represented approximately a 36 percent sample of the Bureau's mining law surface management program. This information was used to develop projections of the Bureau's overall situation regarding surface management noncompliance.

B. Findings

Statistical analysis of the sample survey data indicates that Bureauwide, at least 90% of the approximately 14,100 notices or approved plans are in compliance with the surface management regulations. Some 10% of the operations (1,410) are indicated by the sample data to have instances of noncompliance. Instances of noncompliance relate to failures to perform reasonable reclamation, failures to file a plan or notice, or failures to conform to a notice or an approved plan.

Compliance with the regulations is determined through an inspection program conducted by Bureau field offices. Bureauwide, approximately 50% of the operations have been inspected. Since 1981, the frequency of compliance inspections has steadily increased. This increase in the inspection rate has also resulted in an increase in the discovery of additional instances of noncompliance which are currently being pursued.

The instances of noncompliance generally fall within 3 categories. These include: 1) failure to perform reasonable reclamation, 2) failure to file a plan or notice, and 3) failure to conform to a notice or an approved plan. About 58% of all identified instances of noncompliance have been resolved and some 34% are continuing to be actively pursued by BLM. The remaining 8% generally involves situations where the operator is unknown or cannot be reached. Informal discussions with the operator are usually the first course of action taken by the Bureau to resolve instances of noncompliance. Informal discussions are generally all that is necessary to direct operators back into compliance. About a third of the instances of noncompliance have required the issuance of formal notices of noncompliance. Judicial relief has been required for 4% of all instances of noncompliance.

Analysis of the sample data indicates that Bureauwide about 560 operations with instances of noncompliance (some 4% of all operations) involves instances where the operator failed to complete reasonable reclamation under the surface management regulations.

Although some of these operations may be truly "abandoned," the majority encompass lands still under active mining claim location. The vast majority of these ceased or suspended operations involve minor surface disturbances. There have been very few identified suspended operations which have caused "major" undue or unnecessary degradation. Resource damage appears to be generally limited to erosion, visual impacts, and safety.

It is estimated that the total acres of unreclaimed surface disturbance associated with ceased or suspended operations involve some 2,900 acres. Although this may seem to represent a large acreage, the data does not indicate significant resource damage in the overall perspective. The 2,900 acres represents approximately

3 hundredths of 1 percent of the total acreage of Bureau administered lands under mining claim location. This represents approximately 6 percent of the total acreage involved in all plans and notices filed with BLM under the surface management regulations.

The data shows that compliance with the reclamation requirements of the surface management regulations show that an intensified compliance inspection program during active operations and an aggressive attitude for issuing notices of noncompliance in those States with reclamation laws, correlates with a low percentage of unreclaimed operations. The larger number of operations bonded in States with reclamation laws also correlates with a lower percentage of unreclaimed operations. However, many States with reclamation laws also couple bonding provisions with fines and other penalties as part of an enforcement program.

It appears that selective bonding and a more aggressive inspection and enforcement program has resulted in improved compliance with regulations, including reclamation.

## IV. MANAGEMENT ALTERNATIVES

### A. Increased Compliance and Public Awareness

Increased public awareness of an operator's obligations under the surface management regulations or an increased Bureau presence on-the-ground could result in increased compliance. The Bureau could increase compliance with the surface management regulations by educating the mining community of the procedures to be followed and the authorizations required before conducting operations on a mining claim. Easy to understand pamphlets could be prepared and distributed to mining claimants when they record their claims. These pamphlets could be offered to walk-in traffic in State, District and Resource Area offices and to participants at mining meetings and workshops. A series of video presentations could also be developed that are targeted to different segments of the public and the mining community. Mining claimants could be educated through the pamphlets or video presentations that they may be liable for reclamation of surface disturbance performed by another person who has leased or otherwise been authorized to operate on their mining claims. An increased awareness of liability by the mining claimant could result in a reduction in the number of operations on mining claims that are in noncompliance.

Bureau staff one-on-one contacts with mining constituents in the field also provide opportunities to pass on information and display on-the-ground presence which, itself, encourages compliance. Education of Bureau non-mineral resource specialists to the point where they distribute information to the mineral industry and are comfortable answering simple questions on the surface management regulations could increase Bureau contact with the mining community manyfold. If all non-mineral resource specialists were familiar with the requirements for notices and plans of operation and

carried copies of notices and plans into the field, the Bureau's on-the-ground presence could be enhanced. Bureau signs in the field can also serve to extend the impression of an on-the-ground presence.

B. Criminal Penalties

The surface management regulations do not expressly contain criminal penalties. An operator in noncompliance with the surface management regulations will often though be in violation of the 43 CFR 8360 regulations and 43 USC 1733 (Section 303 of FLPMA). These violations carry a maximum penalty of one year in jail and/or a fine of $1,000. Restitution may be ordered by the court to pay for reclamation or clean-up. The knowledge that BLM will prosecute serious cases may deter noncompliances.

When a violation occurs, a BLM law enforcement officer (Ranger or Special Agent) can file charges against suspected parties with a Magistrate. The alleged violator may plead guilty or no contest at a hearing before the Magistrate, or request a trial by jury in U.S. District Court. Assuming that BLM's case is complete, and the alleged violator is found guilty, he can be sentenced to a fine, imprisonment, restitution, probation, or any combination.

Prosecution under the 43 CFR 8360 regulations offers several advantages. The deterrent effect upon operators that are convicted is notable, since prior convictions can result in a stiffer sentence for subsequent violations. The vigorous prosecution of selected violators will also have a deterrent effect on potential violators. Where court calendars are not overloaded, this approach can be faster than obtaining restraining orders. Although the prosecutions are in criminal courts, incarcerations will probably be rare. Generally, probation and restitution will be highly effective. It should also be noted that restitution, ordered as a sentence, probably cannot be evaded by declaring bankruptcy.

There are several disadvantages to the use of judicial measures to encourage compliance. When an alleged violator requests trial by jury in a District Court, the U.S. Attorney's office may decline to prosecute because of workload or other priorities. This results in a major case setback and a public image problem. The prosecution must also, under the 43 CFR 8360 regulations, prove the violation was knowing and willful. This is difficult to prove in many instances and may result in acquittals, which are considered final judicial decisions. It should also be realized that not all BLM field offices have the law enforcement capability readily available to pursue judicial measures for noncompliance cases.

C. Reclamation Bonds

1. Overview of the Bonding Process

Reclamation bonds are an alternative method to assure compliance with the reclamation provisions of the applicable

regulations. Several state regulatory agencies require reclamation bonds for surface disturbing activities conducted under the mining law.

A variety of bonding instruments are available. Types of reclamation bonds accepted by BLM include: cash bond (certified or personal check), surety bond, and irrevocable letter of credit. Other bonding instruments include, but are not limited to, negotiable securities, certificates of deposit, assigned savings account, and individual surety bonds.

Where bonds are held by a regulatory agency, they are typically incorporated into the permitting process. The bond amount is developed using the nature and extent of the applicant's proposed surface disturbance. The bond may be based on actual reclamation costs or based on standard formulas developed by the agency responsible. In practice, the most common bond types are cash bonds and surety bonds. Some agencies adjust bond amounts yearly depending on concurrent reclamation practices and changes in projected disturbance. The regulatory agency holding the bond is responsible for determining when the reclamation has been completed and that all or a portion of the bond may be released. In the event the reclamation is not completed, the responsible agency will use the bond to perform reclamation.

2. Bonding Capabilities of the Mineral Industry

Bonding affects both exploration and development phases of the mining industry. Small exploration companies and individual prospectors have historically been the finder of prospects for the mineral industry. Mandatory bonding for this segment of the industry may eliminate some small exploration companies or individuals from this exploratory stage of the American mining system. Presently, no bond is required of an operator by the BLM unless there is a record of noncompliance. This allows for the maximum investment of cash for the exploratory and development phases. Tying up capital or adding costs intended for reclamation in the exploratory phase would be viewed by the mining industry as an unnecessary expense if the area is expected to be mined.

Bonds may present a financial burden for some operators. Cash bonds may require the operator to scale back exploration or development activities commensurate with the required bond amount. The operator may have to alter the timing and scope of work to provide money for a cash bond. Letters of credit, negotiable securities and assigned savings accounts may have a similar disadvantage to the operator. Surety bonds pose problems of a different nature for some operators. Surety companies may require up to 100 percent collateral before they will consider bonding. The collateral amount depends on the financial solvency of the operator, the commodity being

explored for or developed, and the extent and certainty of the delineated reserves.

Several surety companies have indicated that for projects in the exploration phase, 100 percent collateral is required. If the operator has acceptable collateral, then the premiums for the bond are not unreasonable. Premiums range from 10 to 20 dollars per thousand dollars of bond amount depending on the liquidity of the collateral. Many operators might be able to afford the premium but they lack the collateral, making bonds impossible to obtain.

For most major mining companies, bonding at the exploration and development phase of an operation will probably not create problems. By adjusting the scope of projects and scheduling concurrent reclamation the operator may be able to keep the bond amount low. In states where bonding is required under state law, mining companies consider bonding an integral cost of doing business. Although in some States, bonds are only required for operations which exceed certain thresholds of activity or disturbance.

During the mine development phase, bond amounts may become large. This could preclude the development of marginal economic deposits or encumber companies with inadequate financial resources.

3. Effectiveness of Reclamation Bonds

All of the states with reclamation laws require some level of bonding. The states of Colorado and Wyoming require mandatory bonding of all mineral activities. Idaho, Montana, Oregon, and Utah require bonds on operations which exceed certain thresholds of activity or disturbance. Under California state law, counties have the discretion to require reclamation bonds. Approximately 25% of the operations in those States with reclamation laws are currently bonded.

State agencies have indicated that bonding is an integral part of their surface management program. They consider the bonding process an important aspect of the permitting stage and it has helped to assure that required reclamation was performed. The ability of an operator to post a reclamation bond indicates the operator's financial condition and reflects its ability to complete reclamation. Those state agencies maintained that the use of bonding served as a screening mechanism of the mineral industry. These State regulatory agencies generally were established to control and restrict surface uses. The BLM is required by the Mining and Minerals Policy Act of 1970 to encourage the development of mineral resources and, therefore, must weigh surface protection versus mineral development.

4. Bonding Options

The bonding options discussed below provide a broad range of possibilities. Combinations of these options are possible to meet the specific goals of the surface management program.

1) Mandatory bonding for all surface disturbing activities may be required to cover the full cost of reclamation.

2) Requiring no bonds for the prevention of undue and unnecessary degradation under the surface management regulations.

3) Limited bonds: Bonds may be limited based on a variety of criteria. Some of which are discussed below.

a) Size: Bonds may be required for operations which exceed a specified acreage limit.

b) Type of operation: Bonds may be required for specific types of operations. Some examples include operations which involve the use of hazardous chemicals, placer operations or various other surface mining operations, etc.

c) Resource sensitivity: Bonds may be required depending on the sensitivity of resources in the proposed area of operations. Examples include Wilderness Study Areas (WSAs), Areas of Critical Environmental Concern (ACECs), outstanding natural areas, riparian areas, etc. Regardless of the resource sensitivity, bonds can only be required to cover reasonable reclamation as provided for in the surface management regulations.

d) Bond amount: Bonds may be limited in dollar amount to cover only a percentage of reclamation costs rather than the entire reclamation amount. This option relies on the reduced bond amount to encourage compliance with the regulations.

e) Operator's noncompliance: Bonds may be required for operators who have established a record of noncompliance. This is the current bonding policy as outlined in the Bureau Manual Section 3809.

D. Reclamation Fund

Establishment of a mine land reclamation fund for operations is an alternative to assure the reclamation of surface disturbances from operations conducted under the mining law.

A reclamation fund developed through a small application fee at the time of either mining claim recordation or submittal of a notice or plan of operations might provide a funding source for necessary future reclamation. Such a program might require legislation to enact. This forces all claimants or operators to bear the cost for the few violators who abandon sites without performing reclamation work. It could be very difficult to establish such a program and administer the received monies. This fund might have the undesirable side effect of increasing cases where operators abandon sites without reclamation. The operator may decide the up-front reclamation fee frees him from reclamation responsibility.

An alternative funding source may be funds developed through the Surface Mining Control and Reclamation Act and administered by state agencies. These funds are available for some "hardrock" reclamation. Another funding alternative may be Land and Water Conservation Fund monies. In some special cases, typically WSAs, the Bureau has requested money for reclamation through the normal budget process. This could be expanded to include specific line item funding in the BLM appropriations to reclaim those limited number of operations which are abandoned without reclamation and involve significant resource damage.

E. BLM/State Agreements

The States of Colorado, Idaho, Montana, Oregon, Utah and Wyoming and some counties in California have developed cooperative agreements or memoranda of understanding for surface management of locatable minerals on public lands. Other BLM states conduct some level of cooperation with their respective state agencies.

When BLM's surface management regulations became effective, several states had programs that regulated prospecting and mining. These state regulatory agencies had regulations requiring the permitting of all exploration and mining activities causing surface disturbance. Consequently, mining claimants/operators, if already in compliance with the appropriate state requirements, had an added burden when meeting the requirements of the BLM surface management regulations. This resulted in a substantial duplication of effort by the operator and the two agencies. In an effort to reduce confusion, duplication, and delay, cooperative agreements were developed between BLM and the appropriate state regulatory agency. This allowed for joint administration and regulation of exploration and mining on public land.

The intent of BLM/state cooperative agreements is three-fold: 1) to allow the operator to comply with both the state and BLM regulations without having to fully duplicate application efforts, 2) improve the quality and quantity of regulatory work that could be accomplished if each agency was working independently of each other, and 3) establish a supplementary relationship whereby one agency's weaknesses could be compensated for by the other's strengths.

Positive results from the development of BLM/state agreements include: an improved spirit of cooperation between agencies, improved quality control, more efficient use of personnel, improved communication with local officials, simplified permitting for industry, elimination of the potential for double bonding of the operator, and standardization of regulatory requirements.

A review of cost figures indicates that the cost per unit of accomplishment for those states having BLM/state agreements is approximately 25 percent higher in states with BLM/state agreements than for those without agreements. Workload increases with the increased coordination and communication required with the State regulatory agency. The BLM, because of greater field staffing levels, also is the primary inspection and compliance agency for the State. Generally, where BLM/state agreements are in effect, there initially may exist some confusion regarding inspection and enforcement responsibilities. However, because states have the authority to assert jurisdiction over mining activities on Federally administered lands, the dual regulatory responsibilities can generate confusion regardless of the status of a BLM/state agreement. It should be noted that state regulatory agencies may assert their jurisdiction over mineral activities on Federal lands as long as the laws of the state are not in conflict or inconsistent with Federal law.

## V. CONCLUSIONS AND RECOMMENDATIONS

The focus of this task force effort has been the surface management of operations under the 1872 Mining Law and the existing Bureau policy regarding bonding of these operations. The information analyzed clearly indicates that the existing number of operations with unreclaimed acreage is relatively low. Accordingly, the recommendations for any changes in the future management of this program will not involve a substantial redesign of the program, but may involve some changes in management policy and guidance.

A primary thrust of the review of the program, and the one matter specifically assigned to the task force for analysis, was the potential future use of bonding. The task force concluded that there is not a need for a comprehensive bonding policy applied to all operations. However, a more flexible bonding policy and aggressive inspection and enforcement program could result in improved compliance within the regulations and ensure reasonable reclamation of the public lands. Selective bonding of plans of operations for specific types of operations or areas with sensitive resource values could ensure reclamation. Bonding for notice-level operations is precluded by the regulations, however, the regulations do include provisions to require the submittal of a plan of operations and a bond for those operations in noncompliance.

Compliance inspections and emphasis on enforcement can be utilized in a more effective manner to improve compliance with the surface management regulations and prevent unnecessary or undue degradation

of the public lands. Additional policy and guidance should be provided to encourage an aggressive inspection program of those specific operations with the potential for causing significant undue or unnecessary damage to other resource values. This inspection effort will help identify noncompliance activities before they become significant.

Based on the findings and analysis conducted by the task force, the following specific recommendations are provided:

1. The existing bonding policy should be revised to provide flexibility to the individual State Directors for selective bonding of plans of operations. Provisions could be made to exempt those existing operations being conducted under an approved plan of operations, if bonding would pose an unfair burden on those existing operations.

   Notices are considered nondiscretionary actions on the part of the Bureau and therefore are not subject to bonding. The recent U. S. District Court (District of Alaska) ruling, (Sierra Club vs. Penfold), dated January 28, 1987, clearly states that BLM does not approve or disapprove operations under notices. However, when an operator has failed to take necessary actions on a notice of noncompliance, a record of noncompliance may be established. A record of noncompliance provides justification for requiring a plan of operations subject to approval by the BLM. The State Directors are encouraged to utilize the provisions of 43 CFR 3809.3-2(e) to require mandatory bonding of notice-level operations conducted pursuant to the required plan of operations.

   We recommend that bonding of plans of operations be limited to 1) specific types of operations with the potential for creating significant damage to other resource values, and 2) identified sensitive areas. Specific types of operations with the potential for creating significant damage to other resource values may include for example: some or certain leaching operations, uranium operations, some placer operations, or other types of operations which have not been permitted by a State environmental/hazardous regulatory authority. Identified sensitive areas could include: WSAs, ACECs, outstanding natural areas, or other "special management areas" identified through the Bureau Planning System. Operators conducting operations under a State reclamation bond would be considered to have satisfied BLM bonding requirements.

   Bonding will continue to be required of any operator with a record of noncompliance conducting operations under a plan of operations. Good faith efforts by an operator to comply with the surface management regulations would be considered when bonding decisions are made on future operations. Regardless of resource sensitivity, bonds would only be required to cover reasonable reclamation as provided for in the surface

management regulations. The rationale for determining the bond amount would be required to be fully documented in the file. The bonding level would be reduced as reclamation is completed.

The Bureau estimates that this revised bonding policy would result in approximately 25% of all plans of operations on BLM lands being bonded. This level of bonding is consistent with the existing level of bonding in those states with state reclamation laws. Currently, less than 10% of the operations on BLM lands in those States without state reclamation laws are bonded.

2. The Bureau's current policy concerning reclamation bonding of locatable mineral operations must be modified to allow the discretion regarding the types of bonds deemed acceptable under the surface management program. Certificates of Deposit, certain securities, letters of credit, and other potential bonding instruments are not accepted by the Bureau. If the frequency of bond requirement increases, a broader range of acceptable bonding devices would benefit both the Bureau and the minerals industry. By reducing the number of bonds held by any one bond holding corporation or surety company, the chance of bankruptcy or bank closure is diminished. The broader range of bond options also lessens the difficulty the industry may realize in obtaining reclamation bonds.

   The Bureau should also initiate an effort to investigate the potential for accepting "less-than-full" reclamation bonds.

   Partial bonding may be utilized in situations where the authorized officer feels that full bonding for reclamation is not necessary to ensure reasonable reclamation. Statewide bonds would be considered as part of this bonding recommendation.

3. The Bureau must increase the intensity of its inspection and enforcement program for the 43 CFR 3809 and 3802 surface management programs. This should be implemented by providing strong guidance and direction to the field offices through policy statements and manual modifications. This guidance must encourage the implementation of a thorough inspection and aggressive enforcement effort by Bureau field offices.

   The Bureau should carefully review its budget priorities for all phases of the mining law administration program. The appropriate priority of surface management and the impacts to other mining law administration programs should be addressed, if the surface management efforts are to be increased.

   Efforts by the task force to gather information to support the analysis of the surface management program and noncompliance have dramatized the importance of maintaining complete files and records. While the sample survey conducted by the task force

generated sufficient information to support the conclusions regarding this report, there is substantial concern regarding the status of the records and information available on the program in Bureau field offices.

There does not appear to be a substantial backlog of unreclaimed abandoned operations where reclamation responsibilities have become the liability of the Bureau. Nevertheless, a workload does exist. A strategy to manage that workload with respect to identifying these abandoned operations and completing any necessary reclamation, should be developed.

The Bureau should continue a public awareness program of the requirements of the mining law surface management regulations. This includes education of mining claimants through the use of pamphlets and video presentations, as well as continued one-on-one contacts with the minerals community. An increased awareness of liability by the mining claimant of operations conducted by lease operators on a claim could also result in a reduction of the number of instances of noncompliance.

4. The Bureau's 3802 and 3809 surface management training programs, as part of BLM Course 3000-19 (Environmental Management for Minerals), should be reviewed and revised in accordance with the program directions and modifications resulting from this task force's efforts. This specialist training would include NEPA compliance, inspection and enforcement procedures, current reclamation techniques, reclamation cost estimating, bonding practices, standard forms and ADP requirements. In addition, all Bureau field personnel should receive a short cross-training course so that range conservationists, petroleum technicians, realty specialists, and all other field personnel are aware of the basic requirements of the 43 CFR 3802 and 3809 regulations. This would ensure that questionable or unauthorized activities can be identified before serious resource damage occurs. Cross-training would expand the Bureau's compliance activities without significantly adding to overall costs.

5. The Bureau should consider modifying the existing surface management regulations 3809.1-4 to provide authority to require a Plan of Operations on certain specific types of operations or special management areas that are highly sensitive or have key resource values. In developing these regulatory modifications, consideration should be given to the need for parallel changes in part 3809.1-9(b)(Bonding). It is not expected that this direction will affect a large number of operations compared to current Notice provisions. The action required in this recommendation will enhance the ability of field personnel to manage a growing array of unique multiple use circumstances.

Such identification of additional criteria would provide a positive tool for all interests in ensuring appropriate management of complex multiple use management issues. It should further

demonstrate the awareness the Bureau and others are placing on effective reclamation. Further, this initiative would provide the Bureau with the flexibility needed to direct resources to higher priority issues.

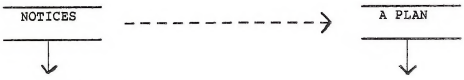
Procedures for processing Notices remain the same. The proposed regulatory changes would expand the array of operations that would require a Plan of Operations, and would mirror those changes with additional language regarding related bonding provisions. See Illustration #1 - Flow Chart, further depicting intent of this recommendation.

ILLUSTRATION 1

FLOW CHART

FLOW CHART FOR RECOMMENDATION #5

The following is a chart that depicts the proposed recommendations being discussed by the Bonding Task Force as it relates specifically to Notices and Plans of Operation.




CURRENT GUIDANCE

- Notice Filed
- No approval of disapproval
- Not subject to review under NEPA
- Stipulations (as appropriate)
- Not subject to bonding. However, failure to respond to action of non-compliance under 43 CFR 3809.3-2(e) can establish record of non-compliance which requires development of "A Plan" and then appropriate bonding.

PROPOSAL

- The identification of more specific sensitive areas, types of operations, etc., would require such operations to have "A Plan." This would be non-discretionary and subject it to the guidance on bonding as indicated for Plans.

CURRENT GUIDANCE (regardless of acres/size)
(43 CFR 3809.1-4

- NEPA process
- Approval of Plan for unnecessary and undue degradation
- Excess of 5 acres
- WSAs
- ACECs
- Wild & Scenic Rivers
- California Desert
- BLM Bonding policy requires that an operator with history of non-compliance be bonded.
- Bonding regulations provide that bonding may be required at the discretion of the Authorized office. However, BLM policy does relate to history of non-compliance for bonding.

PROPOSAL (Additions)

- Specific types of operation (This will require additional input to implement.)
- Hazardous Waste (This will require additional input to implement.)
- Special Managaement Areas (This will require additional input to implement.)

- Bonding (Proposed)
  - Bonding required of any operator with record of non-compliance (current policy)
  - Non-discretionary bonding (Specifically identify those activities or areas that must be bonded. This will require additional input to implement.)
  - Discretionary bonding that provides for selective bonding per Task Report. (This will require additional input to implement.)

POINTS OF EXPLANATION

1. There are two significant actions reflected in the flow chart:

   (1) The inclusion of additional specific on-the-ground requirements (types of operations, sensitive areas to be identified, etc.) that will place some additional "Notices" in the "Plan of Operations" category. These need to be identified through the Bureau Planning System and related processes.

   (2) The criteria to be addressed under "Plans" is being expanded to cover the specific situations, etc., that are now being considered by management but not specifically identified to our publics through regulations or policy. Further bonding discretion and selectivity is suggested for modification to better fit the on-the-ground situation.

2. The Notice regulations and policy have not been changed. The on-the-ground criteria has been expanded under "Plan of Operations" requiring additional "Plan" considerations.

3. Even without the Notice vs. Plan concept, the Task Force Recommendations will require additional input to effectively implement the recommendations applicable to the "Plan" as depicted in the chart. This includes added criteria such as identification of sensitive areas and bonding options.

4. Of most importance is that this recommendation be 'driven' by identified on-the-ground resources. The intent is to demonstrate and place BLM in a positive offensive position which supports responsible selective bonding, as appropriate.

APPENDIX A

GAO Report

United States General Accounting Office

GAO

Report to the Secretary of the Interior

March 1986

# PUBLIC LANDS

# Interior Should Ensure Against Abuses From Hardrock Mining




GAO/RCED-86-48

GAO

United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division
B-222092

March 27, 1986

The Honorable Donald P. Hodel
Secretary of the Interior

Dear Mr. Secretary:

This report describes how effectively the Bureau of Land Management (BLM) is regulating mining activities conducted under the Mining Law of 1872, as amended. We found that because BLM does not require its state offices to screen mining claim data at the time the claims are recorded (1) some claims are recorded without sufficient information to determine their location and (2) claims located on federal lands after they are closed to minerals exploration and development are not being identified and invalidated. Furthermore, despite legislative requirements for reclamation, some BLM lands are not being reclaimed, and BLM does not require most miners to post bonds covering the costs of reclamation.

As you know, 31 U.S.C. 720 requires the head of a federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of this letter and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of this letter.

We are sending copies of this report to the Senate Committee on Energy and Natural Resources, the House Committee on Interior and Insular Affairs, and other interested parties.

Sincerely yours,

J. Dexter Peach
Director

# Executive Summary

About 2 million mining claims are located on federal lands, mostly in the West. Yet, until the 1970's, the federal government did not know the number of claims on its lands or where they were located. Further, the federal government had little authority to control the environmental effects of mining. The Federal Land Policy and Management Act of 1976 (FLPMA) was intended to correct these shortcomings by requiring claim holders to record mining claims with the Interior Department's Bureau of Land Management (BLM) and by authorizing BLM to protect its lands from environmental damage.

GAO reviewed BLM's policies and procedures to determine if BLM is assuring that

- mining claims are not located on federal lands after they are closed to mineral exploration and development and
- federal lands are adequately reclaimed once mining activity ceases.

## Background

Under the Mining Law of 1872, still in effect, a person could enter federal lands and establish or locate a claim to a valuable deposit of hardrock minerals such as gold, silver, and copper. The law required only that the claim holder meet state requirements for recording claims, which generally meant entering the claims in county land records. Few other conditions were imposed. Consequently, federal land managers had few means under the Mining Law to control environmental damage.

By its nature, however, mining can cause significant environmental disturbance. Consequently, under various laws, the Congress prohibited mining in national parks, wilderness areas, and other special-purpose lands by "withdrawing" them from mining. FLPMA required claim holders to record their claims with BLM's state offices so that BLM could maintain an accurate inventory of mining claims. This recording process also allows BLM to identify and invalidate claims located on federal lands after they are withdrawn.

FLPMA further authorized BLM to directly regulate environmental effects on its lands. Mining operations affecting more than 5 acres a year must have an approved plan of operations, including a plan to reclaim lands disturbed by mining, while smaller operations need only file a notice of intent to mine. (See pp. 10 and 22.)

## Results in Brief

Because BLM does not require its state offices to review mining claim data submitted by the claim holder at the time the claims are recorded, some offices are not invalidating claims which are located on federal lands after they have been withdrawn from mining. (See p. 17.) In addition, despite the requirements for reclamation, some BLM lands are not being reclaimed, and BLM does not require most miners to post bonds covering the costs of reclamation. (See pp. 24 and 28.)

## Principal Findings

### Screening Mining Claims

In 5 of the 10 western states where most mining claims are located, BLM state offices screen claims as they are recorded to make sure that they are not located on withdrawn lands. However, BLM offices in the other five states—California, Colorado, Nevada, Oregon, and Wyoming—do not screen. In Colorado and Nevada, GAO estimates that 2,178 and 2,286 mining claims, respectively, were located on federal lands after they had been withdrawn from mineral exploration and development. (See p. 16.)

### Reclamation of Mined Federal Lands

Between 1981 and 1984, more than 8,600 plans of operation and notices of intent to mine were filed with BLM. Each of these mining projects could cause surface disturbance requiring some degree of reclamation, such as reshaping the land, reapplying topsoil and vegetation, and removing or controlling toxic materials.

To determine whether reclamation requirements are being met, BLM recommends at least one mine site inspection. GAO obtained information from BLM on the most active mining districts in 10 western states and found that more than half of 556 mine sites that began operations in 1981 had not been inspected. BLM was, therefore, not aware of whether any of these mining operations had been abandoned and left unreclaimed. Of 246 sites that were inspected, 96 sites, or 39 percent, had not been reclaimed at the time of inspection. (See p. 24.)

The full extent to which mined lands are not reclaimed is unknown, but BLM officials in Colorado and Nevada were able to identify 30 sites for GAO which showed varying degrees of environmental damage, including deep trenches and open pits. Each of these sites was either abandoned or mining operations had been suspended, and BLM officials doubted that operators will return to reclaim the sites. (See pp. 24-27.)

One way to ensure that mined sites are reclaimed is to require operators to post a bond that covers the costs of reclamation and is released only when the land has been reclaimed. Although BLM can bond mine operators who file a plan of operations, it is agency policy to require a bond only if operators have a record of noncompliance. Further, the regulations do not require bonds from operators working under notices of intent—the most frequent type of mining operation.

BLM excludes most operations from bonding requirements because of its concern for imposing added costs on mine operators. However, without such a financial guarantee, BLM has no way of assuring that reclamation will occur. GAO believes, based on limited available information, that the relatively modest cost of bonding is justified by the need to assure that mined lands will be reclaimed by the operator and not at public expense. (See pp. 27-30.)

## Recommendations

GAO recommends, among other things, that the Secretary of the Interior direct BLM to

- screen mining claim information at the time claims are recorded and invalidate those claims located on federal lands after they have been withdrawn (see p. 18) and
- require all mine operators to post a bond in an amount large enough to cover the costs of reclamation if their operations could cause significant land disturbance. (See p. 32.)

## Agency Comments

Interior disagreed with GAO's recommendations. It stated that BLM already requires sufficient claim location information and that it is not necessary to invalidate claims until an operator plans to begin mining. In addition, its current bonding policy, according to Interior, is an equitable managerial tool and can foster both mineral development and environmental protection goals without imposing substantial costs on operators. (See pp. 18 and 32 and app. I.)

Although BLM requires sufficient claim location information, some BLM offices do not screen that information (at the time claims are recorded) to determine whether they are located on withdrawn lands. Because claim holders must perform some assessment work on the land each year to maintain title to their claims, BLM is not assuring that environmental damage will not occur to withdrawn lands between the time a

claim is recorded and an operation proposed. Finally, GAO's review demonstrates that the current bonding policy is not achieving environmental protection goals, since at least 30 sites in 2 states were left unreclaimed. GAO found that, contrary to Interior's assertion, bonding can better assure that reclamation will take place without placing an undue burden—about $12 to $75 per year for a typical small operation—on mine operators. (See pp. 18 and 32 and app. I.)

# Contents

## Abbreviations

| | |
|---|---|
| BLM | Bureau of Land Management |
| FLPMA | Federal Land Policy and Management Act of 1976 |
| GAO | General Accounting Office |
| RCED | Resources, Community, and Economic Development Division |

# Introduction

Until the 1970's, the development of certain minerals on federally owned lands was largely unrestricted. In general, persons wishing to establish a mining claim on federal lands did not have to inform the federal government, nor could the government directly regulate mining to control environmental damage. However, legislation passed in 1976 attempted to remedy this by requiring claim holders to (1) record their claims with the federal government, (2) take measures to mitigate environmental impacts, and (3) reclaim mined federal lands. Accordingly, the Department of the Interior's Bureau of Land Management (BLM) issued regulations in 1977 and 1980.

## The Mining Law of 1872

Unlike fuel minerals (coal, gas, and oil), minerals such as gold, silver, and copper can be mined by anyone who discovers them on federal lands. Under the Mining Law of 1872 (30 U.S.C. 22 et seq.), a U.S. citizen (or a corporation licensed to do business in the U.S.), can freely enter federal lands open to mineral development and establish a claim to any valuable hardrock mineral deposit discovered. Once the claim has been entered in local land records, the claim holder has exclusive rights to the land for mining purposes. To maintain the claim, the holder must perform at least $100 of assessment work a year, that is, drilling, excavation, or other development work. After a deposit has been discovered, the claim holder may patent the claim and purchase the land, including mineral rights, from the government for $2.50 to $5 an acre. Whether patented or not, however, a mining claim is a fully recognized private interest that can be traded or sold.

The Mining Law of 1872 was one of a number of laws aimed at increasing settlement and development of the West. Originating in the rules and customs instituted by miners during the early days of the Gold Rush, its basic underlying principle was the granting of exclusive mineral rights as a reward for discovery.

In 1920 the Mineral Leasing Act (30 U.S.C. 181 et seq.) amended the Mining Law of 1872 by creating a leasing system for coal, oil, gas, phosphate, and other fuel and chemical minerals. Under a leasing system, the government determines which of its lands will be made available for mineral development and, in its leases, sets the terms under which development can take place. In 1955 common varieties of sand, stone, and gravel were removed from development under the Mining Law. Other minerals, however, commonly referred to as locatable, hardrock, or nonfuel minerals, still fall under the Mining Law of 1872. They

include both metallic minerals, such as gold, silver, copper, iron and lead, and nonmetallics, such as fluorspar and asbestos.

Since the Mining Law required only that claim holders meet local recording requirements, the federal government did not know how many claims were located on federal lands, although in the mid-1970's, estimates were as high as 6 million claims. Without a search of county records, the government was unable to tell which claims were being mined, on which lands they were located, or whether mining claims were being located on lands that had been closed to mineral development.

Of the 732 million acres of federal lands, mining is prohibited on more than 135 million acres, which are said to be withdrawn from mineral entry. Some of these lands were withdrawn by the Congress under a number of different laws; others were withdrawn by the Secretary of the Interior under various legislative authorities.

More than half of these withdrawn federal lands are national parks and monuments; the remaining lands are managed by BLM, the U.S. Forest Service, and other federal agencies. Wilderness areas, Indian reservations, military reservations, scientific testing areas, some reclamation projects, and some wildlife refuges are also off-limits to mining.

Mining was restricted in withdrawn areas because the Congress or the Secretary of the Interior believed that it would conflict with the intended purpose or values of the lands. In general, mining claims located on federal lands after the land has been withdrawn from mineral exploration and development are considered invalid, and anyone working such a claim on withdrawn land is trespassing.

Without such mitigating measures and land reclamation requirements, mining can leave unsightly scars on the land, create health and safety hazards, contribute to air and water pollution and soil erosion, and destroy vegetation and wildlife habitat. Prior to the passage of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 et seq.), these environmental effects could be regulated to some extent under federal clean air and water legislation and under certain state laws. However, BLM land managers lacked clear and direct authority to regulate the environmental effects of mining, and withdrawals became a tool to use in the absence of such authority.

## The Federal Land Policy and Management Act of 1976

FLPMA established a policy of land use planning and management based on the concepts of multiple use and environmental protection. It was enacted, in part, in response to the recommendations of a commission the Congress established in 1964 to make a comprehensive study of public land laws. The Public Land Law Review Commission's 1970 report cited several shortcomings in the Mining Law, noting that federal land managers were unaware of where mining claims were located and that they had no means to effectively control environmental impacts resulting from mining activity.

FLPMA required all persons holding mining claims on federal lands—those managed by BLM, the Forest Service, or any other federal agency—to record their mining and claim sites with BLM. BLM was also authorized to take necessary actions to control environmental impacts on its lands. Section 314 of FLPMA requires all holders of mining claims to file a record of their claims within 90 days after they are located. Holders of claims located before October 1976 were given 3 years to record their claims. According to BLM, as of September 1985, about 2 million mining claims were recorded with the agency, 90 percent of them in the western states.[1]

To control the effects of mining and other activities, Section 302(b) of FLPMA directs the Secretary of the Interior to "... take any action necessary to prevent unnecessary or undue degradation of the lands." According to BLM regulations, this means that operators must reclaim lands disturbed by mining as soon as feasible, which in turn means reshaping land disturbed by operations, saving and reapplying topsoil, controlling erosion, isolating or removing toxic materials, and revegetating disturbed areas.

These regulations apply only to the approximately 342 million acres of BLM lands, which account for about half of the federal domain. While BLM is responsible for managing the mineral resources underlying lands owned by other federal agencies, those agencies regulate the surface resources of their lands. Thus, the Forest Service, second to BLM in acreage with about 192 million acres, has separate authority under regulations issued in 1974 to control the environmental effects of mining on its lands.

[1]These states include Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming. Those with the greatest number of recorded mining claims are Nevada (about 319,000 claims), Utah (about 283,000 claims), Arizona (about 228,000 claims), and Colorado (about 207,000 claims).

## Objectives, Scope, and Methodology

Our objective was to evaluate how BLM carries out its mining claims recording and environmental protection responsibilities under FLPMA. In particular, we focused on whether BLM had procedures to assure that

- BLM is provided with enough information to determine (1) where mining claims are located on its lands and (2) whether mining claims were located on federal lands after the land was withdrawn from mineral exploration and development and
- mined federal lands are adequately reclaimed once mining activity conducted under the Mining Law of 1872 ceases.

## Recording Mining Claims

In examining how BLM records mining claims, we talked to BLM officials in each of the 10 western states that account for most hardrock mining activity on federal lands. We discussed claim-recording procedures over the telephone with BLM state office officials in eight of these states: Arizona, California, Idaho, Montana, New Mexico, Oregon, Utah, and Wyoming. In addition, we visited the Colorado and Nevada BLM state offices to discuss recording procedures and to review a sample of mining claim files. We chose these two states for in-depth review because of the large number of mining claims located in each state. BLM officials also suggested these states because of their high levels of mining activity. (See app. II for a list of BLM offices visited.)

In order to estimate the number of claims with inadequate location descriptions or located on withdrawn land, we developed statistically reliable projections for Nevada and Colorado at the 95-percent confidence level from the sample of active claims we selected. In order to be considered active, the claim had to have either a current annual assessment affidavit on file (a document from the claim holder stating that the legal requirements for holding a claim were met), or have been filed within the last year prior to September 14, 1984. In Nevada we drew a sample of 135 mining claims which included 38 inactive and 97 active mining claims from a universe of 317,538 claims. On the basis of the number of active mining claims in the sample, as of the time of our review we projected the active claim universe in Nevada to be 228,627 at the 95-percent confidence level. In Colorado, the sample of 280 mining claims, including 184 inactive and 96 active mining claims, came from a universe of 206,619. Again at the 95-percent confidence level, we projected the active claim universe in Colorado to be 70,250.

To determine whether the mining claim location information was sufficient to locate the claim on the ground, we asked BLM officials to determine the sufficiency of the information contained in the location notices. To determine if claims were located on withdrawn lands, we plotted the claims on BLM master title maps and noted if they lay partially or completely on withdrawn federal lands. In doing this, we compared the date of the location of the mining claim to the date of the withdrawal. Any claim located after the date of the withdrawal was considered invalid. Any claim located prior to the date of the withdrawal was considered valid. Our projections were based only on invalid claims. Throughout this process, BLM officials assisted us in order to confirm our findings.

## Mined Land Reclamation

To determine whether mined federal lands are being reclaimed, we talked to responsible BLM officials in Washington, D.C., and in each of the 10 western state offices. Within each state, we also gathered data over the telephone from BLM district offices located in areas with heavy mining activity. Again, because of the amount of mining in those two states, we visited Colorado and Nevada BLM state offices. Officials there identified mining sites and accompanied us on visits to these sites that they believed had been abandoned without reclamation.

Because of the similarity in land management and environmental protection responsibilities, we reviewed Forest Service bonding practices in order to compare them with those of BLM. We visited three Forest Service offices in Colorado: the Rocky Mountain regional office in Denver, the Ouray Ranger District office in Montrose, and the Alamosa Ranger District office in Durango. There, we interviewed officials responsible for mined land reclamation on Forest Service lands. At the two district offices, we also reviewed selected case files to determine how the Forest Service handles mining operations involving significant surface disturbance.

We conducted our review between September 1984 and November 1985 in accordance with generally accepted government auditing standards.

# BLM Should Strengthen Its Procedures for Recording Mining Claims

Although one of the major objectives of FLPMA's mining claim recording requirement was to allow federal land managers to know where mining claims are located in case they wanted to sell or exchange their lands, not all BLM state officials review mining claim location information at the time the claims are recorded. Consequently, some claims are recorded without sufficient information for BLM to determine their location on the ground.

BLM had earlier recognized that the recording process allows its land managers the opportunity to identify mining claims located on federal lands after these lands have been withdrawn so that the claims could be declared invalid and not recorded with the agency. Although BLM once had a policy to check land status at the time claims were recorded, that policy expired in 1977. Current BLM policy, although it recognizes that claims on withdrawn lands should be identified and declared invalid, does not specify when this should be done. As a result, we found that BLM is recording invalid mining claims.

## Requirements for Mining Claim Location Data

FLPMA's requirement for recording mining claims with BLM was intended to let federal land managers know which of their lands were covered by mining claims. Before FLPMA was enacted, each time BLM, the Forest Service, or other land-managing agencies proposed a sale or exchange of land, it had to undertake a lengthy search of county records to determine whether any outstanding mining claims might encumber the conveyance. If mining claims did exist, the agency had to take formal administrative actions (as is still required) to determine the mining claim's validity or legal status.

Section 314 of FLPMA requires claim holders to file a notice or certificate of location with BLM in addition to meeting state law requirements that usually require claims to be recorded with the county where the mining claim is located. Claim holders are required to submit a copy of the notice or certificate of location and a geographic description that would allow BLM officials to locate the claimed lands precisely or, as expressed in FLPMA, on the ground. According to BLM regulations, the claim holder must submit data with the location notice that identifies the specific quarter-section (a 160-acre area) in which the claim is located. To further locate the claim, the notice must be accompanied by either a map or narrative description that places the mining claim in relation to some well-known permanent object such as a hill, bridge, stream fork, or road intersection.

## Screening for Mining Claim Location Information

To determine whether BLM was obtaining sufficient information to locate mining claims on the ground, we talked to 10 western BLM state offices and reviewed a sample of current location notices in two of these states—Colorado and Nevada.

We found that the 10 BLM state offices check location information as the claims are recorded to make sure that claim holders specify the quarter-section in which the mining claim is located. This information is required for entering a record of the claim into BLM's computerized mining claim recording system. If the information is not included, BLM staff ask the claim holder to provide it. However, BLM state officials responsible for recording mining claims told us that quarter-section data were not enough to locate mining claims on the ground. Although BLM regulations require claim holders to furnish more detailed information that allows the claim to be found on the ground, some BLM state offices do not check to make sure that this information is provided.

BLM state offices in Colorado, Montana, Nevada, and Oregon do not check beyond quarter-section data, while state offices in Arizona, California, Idaho, New Mexico, Utah, and Wyoming check for maps or some other information that places the claim in relation to some well-known landscape feature. For example, in New Mexico, BLM state officials told us that they ensure that enough information is provided by plotting mining claim locations on BLM's master title maps. A copy of the map is then placed in the mining claim file.

In Colorado and Nevada, states with a great deal of mining activity that do not check for information more specific than the quarter-section data, we reviewed a statistical sample of mining claim location descriptions. BLM officials determined for us the adequacy of the claim location information. Based on this determination, we estimate that in Colorado about 2,950 location descriptions do not contain enough information to locate the claims on the ground, while in Nevada this is true of about 4,800 location descriptions.

In addition to not being able to locate claims on the ground, in these cases BLM officials would have to obtain further information from claim holders when any changes in land use or a land sale or exchange are contemplated. A number of BLM state office officials told us, however, that trying to obtain information at that point can be difficult and time-consuming because claim holders are often hard to find. In their view, it is much easier to gather location information when the claim is recorded.

## Screening for Mining Claims on Withdrawn Lands

More than 135 million acres of federal land are closed to mining. Mining claims located on these lands before they were withdrawn are considered to have valid existing rights. Claims located after the lands were withdrawn are considered invalid. However, not all BLM state offices check to make sure that mining claims located on these lands after they were withdrawn are declared invalid. BLM state offices in Arizona, Idaho, New Mexico, Montana, and Utah routinely make such checks, but offices in California, Colorado, Oregon, and Wyoming do not. Nevada does not screen claims as they are recorded, but it has begun to retrospectively review claims filed since 1977. We estimate that, in Colorado, about 2,178 mining claims were located on federal lands after they were withdrawn and, in Nevada, about 2,286 were located on withdrawn federal lands after the date of the withdrawal.

In addition to our sample results, we found other evidence that mining claims were being located on lands after they had been withdrawn. In an April 1984 memorandum from the Montrose, Colorado, District Manager to the State Director, the District Manager stated that he suspected that more than 70 mining claims had been located in an area of federal land withdrawn since 1957 for a Colorado River water storage project. In checking this area further, we found 231 mining claims that had been located either totally or partly within the boundaries of this withdrawn area after the withdrawal had occurred. We brought this matter to the attention of BLM state officials who told us that they would not rule on the validity of the claims unless BLM received complaints from the public or other land-managing agencies.

In those states that routinely screen location information, BLM staff check mining claim information against BLM's master title maps. These maps show the status of all lands within a state. If the claim appears to be on withdrawn federal lands, BLM adjudicates the claim, that is, it issues a formal decision on the claim's validity and notifies the claim holder. An Arizona BLM official estimated that about 300 to 400 mining claims recorded before January 1984 were invalidated in this way, while Idaho BLM officials estimated that they invalidated between 1,500 to 2,000 mining claims recorded before January 1985 because they were located on withdrawn lands.

Although current BLM policy is to adjudicate invalid claims when they are identified, in those states where the status of claimed lands is not routinely checked, BLM officials adjudicate a claim only when some specific complaint is made, either by the public or other land-managing agencies. The California BLM state office, for example, recently reviewed

some mining claims at the request of an environmental organization and found that they had been located on withdrawn lands. In addition, the head of BLM's Mining Law and Salable Minerals Division in Wyoming told us that some mining claims had recently been declared invalid because they had been located on lands withdrawn for aesthetic and environmental protection. The division chief said, however, that the BLM state office did not know how many other such claims existed.

BLM state office officials in Colorado and Oregon have undertaken reviews of their mining claim files as time and staff availability permit. The Nevada BLM state office has instituted a systematic review of all recorded mining claims, but as of September 1985, it had completed a review of claims filed in 1977 only.

## BLM Lacks a Policy on When to Check Land Status of Mining Claims

The variation among BLM state office practices on screening mining claim information arises from the absence of an agency-wide policy on when these claims are to be screened. Although BLM policy recognizes that claims on withdrawn land without valid existing rights should be identified and declared invalid, it does not specify when this should be done. BLM once had a directive requiring that the recording process be used to identify mining claims located on withdrawn federal and private lands. But it was allowed to expire, and the agency has not issued any specific instructions to BLM state offices on when to examine land status.

According to BLM's program leader for mining claim recording, the agency expects claim holders to review land records in local BLM offices to make sure their claims are located on lands open to mineral exploration and development. After that, BLM state offices may check location notices, depending on how important the activity is considered relative to other BLM state program responsibilities. BLM officials in state offices that review mining claim data at the time of recording believe that screening is a high priority because it protects withdrawn federal lands and reduces the administrative costs of subsequently adjudicating claims. Officials of those BLM state offices that do not screen claims told us that they have higher priority land management activities.

Although BLM does not currently have a policy on when location notices should be screened, this was not always the case. According to a 1980 report on selected aspects of the recording process prepared by Interior's Inspector General, BLM had a directive on recording procedures that expired in 1977. The directive specified that master title maps be examined, and if a mining claim appeared to be located in an area

restricted from mining, the mining claim was to be declared invalid. Pointing out that BLM was subject to criticism for recording invalid claims, the Inspector General recommended that BLM replace the expired guidance and establish a formal, uniform procedure to timely identify invalid mining claims for subsequent adjudication.

No action was taken on the Inspector General's recommendation. According to BLM's mining claim recording program leader, the possibility of establishing such a uniform policy has been discussed within BLM for a number of years, but it has not been considered of sufficiently high priority to renew the directive. Nevertheless, in a June 1980 memorandum to all state offices, the BLM Director said that one of the purposes of the recording process was to help BLM prevent unauthorized mining and possible surface damage on withdrawn federal lands.

## Conclusions

FLPMA's requirement to record mining claims with BLM was designed to give federal land managers information needed to carry out their planning and management responsibilities. The recording process can also assist BLM land managers in preventing damage to withdrawn lands on which mining is prohibited.

Some BLM state offices make sure that mining claim notices contain sufficient location information and are not located on withdrawn federal lands. Other state offices, however, have accorded this job a lower priority, performing it intermittently or not at all. BLM headquarters is aware of the problem, but it has not taken corrective action.

While BLM requires claim holders to submit mining claim location information, its current procedures to screen the information stop short of ensuring that the required level of detail is provided. Because some BLM state offices check only for quarter section data, claims have been recorded which BLM officials are unable to locate on the ground. By checking for all necessary location information at the time the claim is recorded, BLM saves the time and expense that may be involved in later searches. With this detailed location information, BLM can also identify and invalidate claims on withdrawn lands, thus protecting the lands from mining and any related damage before trespass occurs.

## Recommendations

We recommend that the Secretary of the Interior require the Director of the Bureau of Land Management to establish a uniform policy to review

mining claim location information when the claims are recorded with BLM to ensure that:

- The location information provided contains sufficiently detailed descriptions to enable land managers to find the location of claimed federal lands.
- Only those mining claims located on lands open to mineral exploration and development are recorded with BLM. Mining claims located on federal lands after the lands were withdrawn should be formally declared invalid by BLM.

## Agency Comments and Our Response

Interior did not agree with our recommendations, contending that current BLM policies and regulations were sufficient. Pointing out that BLM has had a policy to determine land status since 1977, Interior said that it has always been the responsibility of the claim holder to establish land status before locating a mining claim. Thus, while land status determination is provided as a service as resources permit, it is not the sole or even primary function of the mining claim recording program.

Interior suggested that to review location information before recording mining claims would not be possible until some of the large backlog of claims in state offices from the rush to meet the FLPMA deadline was cleared. In any case, Interior said, it would be more cost-effective to determine whether a mining claim is located on withdrawn land at the time a claim holder plans to begin operations rather than during the recording process. First, Interior said, earlier screening does not prevent surface disturbance since this takes place during the process of claim staking. Second, Interior states that BLM officials can best determine the location of the claim on the ground when reviewing an operator's proposed operation. Finally, Interior said, FLPMA does not require that BLM be able to pinpoint the claim, but only locate it on the ground.

Interior went on to point out that mining claims located on federal lands before they are withdrawn retain valid existing rights, a concept not recognized in our report. Therefore, Interior believed that many of the more than 2,000 claims in Nevada we projected to be on withdrawn lands were those with valid existing rights. Interior also believed that our sample of claims was drawn from all claims recorded, not just those that are current and active and, therefore, our estimate was inflated. For these reasons, Interior concluded that our analysis needed to be redone and our conclusions adjusted accordingly.

Interior's interpretation of our findings and recommendations is based on incorrect assumptions about our review methodology. To correct this problem, we have made clarifying changes to the report. For example, we have made clear that our projections were based only on claims located on lands after the date of withdrawal and do not include claims with valid existing rights. Likewise, our projections are based not on the total number of claims recorded, as Interior charges, but only on those claims that are active. We, therefore, remain confident in our analysis and the conclusions drawn from it.

Current BLM policy, although it recognizes that mining claims located on lands after they were withdrawn should be identified and declared invalid, does not specify that this should be done at the time the claims are recorded with BLM. Yet, BLM state officials told us that doing so saves time and trouble involved in later searches. In addition, those same BLM state officials believe it is important because it protects withdrawn federal lands from possible surface disturbances and reduces the administrative costs of locating the claim holder and invalidating the claims later on.

We disagree with Interior that checking a claim location at the time a claim holder proposes to begin operations is more cost-effective. All BLM state offices already review claim location information to some extent at the time claims are recorded. Carrying this screening process further would take little extra effort in our view and—even more important—is the only way BLM can make sure that its requirements for complete information are met. We also disagree that checking land status during this screening process affords no additional environmental protection to withdrawn lands. At a minimum, claim holders must perform at least $100 of assessment work each year to maintain title to their claims, which could include drilling and excavation. Consequently, Interior has no assurance that no further damage will occur to withdrawn lands between the time a claim is recorded and an operation proposed.

Although Interior implies that the backlog of claims has kept BLM state offices from screening location information even if they wanted to, we found no indication of this in our review. Those BLM state offices that do not screen told us that although they recognize the importance of initial screening, they have assigned this task a low priority because of other land management responsibilities. They did not mention a backlog of claims as a reason for not screening.

In using the term "pinpoint," we did not mean to suggest that BLM require any more information, but only that it check to make sure that the information needed to locate the claim was actually furnished. Although "pinpoint" is commonly used to mean "precisely locate," we have deleted it from the report in the interests of clarity. As noted earlier, BLM officials reviewed claim location descriptions for us and it was their view that the data provided were not enough to locate the claims on the ground.

# BLM Should Require Bonding to Assure Reclamation of Mined Federal Land

To prevent unnecessary or undue environmental degradation of its lands, BLM requires all mine operators to reclaim lands disturbed by mining as soon as feasible. Bonding—requiring an operator to post a financial guarantee—could provide such assurance, but BLM has limited its use. We found unbonded mining operations that have been either suspended or abandoned, and any reclamation of these damaged lands may have to be performed at public expense.

## BLM Requirements for Land Reclamation

Before FLPMA's enactment, the Secretary of the Interior generally had two options for controlling the environmental effects of mining operations under the Mining Law of 1872: informally requesting the mine operator to control environmental impacts or withdrawing the land from mineral activity. If the mine operator did not cooperate, the Secretary then had to seek court-ordered actions or institute withdrawal procedures. By giving the Secretary broad authority to prevent unnecessary or undue degradation of the public lands without specifying the means, Section 302(b) of FLPMA granted the Secretary clear authority to effectively exercise environmental controls.[1]

## Types of Mining Operations

The type and extent of reclamation needed to mitigate mining damage vary depending on the nature of the mining operations and the type and extent of the damage to the land. BLM's regulations define reclamation to mean taking reasonable measures to prevent unnecessary or undue degradation of the federal lands, including reshaping land disturbed by operations, saving and reapplying topsoil, taking measures to control erosion, taking measures to isolate, remove or control toxic materials and revegetating disturbed areas.

BLM's regulations implementing Section 302(b) of FLPMA define three distinct levels of mining operations: (1) casual use, (2) disturbances of 5 acres or less per year, and (3) disturbances of more than 5 acres per year. At all three levels, the operator must prevent unnecessary or undue degradation and complete reclamation at the earliest feasible time.

The first level, "casual use," normally includes operations that cause only negligible surface disturbance. Mining activities are generally considered casual use if they do not involve the use of mechanized earth-

[1]While the Secretary may still have to seek court orders to prevent operators from causing undue or unnecessary degradation, FLPMA provides clear authority for such actions.

moving equipment and explosives. For the second level, surface disturbance of 5 acres or less per year, the operator must submit a letter or "notice of intent" to BLM 15 days before starting operations. For the third level, surface disturbance of more than 5 acres per year, the operator must submit a "plan of operation" that describes the entire mining operation, including equipment, location of access routes, support facilities, drill sites (to the extent possible), and reclamation plans. While operators are required to notify BLM when any necessary reclamation has been completed, they are not required to indicate in their notices or plans the dates by which they expect to have completed site reclamation. According to BLM regulations, BLM may require reclamation of mine sites even before the operation is complete if the site is inactive for an extended period of time.

As table 3.1 shows, since 1981, 8,645 notices of intent and plans of operations were filed with BLM, with more than 2,000 filed in Nevada. More than 70 percent of all filings have been notices of intent.

**Table 3.1: Notices and Plans Filed With BLM Under the Surface Management Program (1981 - 84)**

| State | Notices of intent filed from 1981 through 1984 | Plans of operations filed from 1981 through 1984 | Combined total |
|---|---|---|---|
| Alaska | 902 | 274 | 1,176 |
| Arizona | 731 | 336 | 1,067 |
| California | 317 | 876 | 1,193 |
| Colorado | 532 | 31 | 563 |
| Idaho | 264 | 42 | 306 |
| Montana | 280 | 28 | 308 |
| Nevada | 1,841 | 222 | 2,063 |
| New Mexico | 190 | 13 | 203 |
| Oregon | 599 | 29 | 628 |
| Utah | 643 | 81 | 724 |
| Wyoming | 373 | 41 | 414 |
| **Total** | **6,672** | **1,973** | **8,645** |

## Extent of Reclamation

To determine whether mine operators were fulfilling BLM's reclamation requirements, we collected information on operations conducted in the 10 BLM resource areas with the greatest mining activity in each of the 10 western states we examined. We looked only at operations conducted under notices and plans filed in 1981, the first year operators were

required to notify BLM. We expected that some action would have been completed in these cases in the past 4 years and that BLM would have had enough time to inspect them. The 556 operations identified represent about 29 percent of all those filed that year in the 10 western states we reviewed.[2]

BLM does not require any mine site inspections but recommends that district offices make at least one inspection to make sure that operators are complying with reclamation and operating requirements. Because of the number of mine operators and the great distances over which they are spread, BLM recognizes that more frequent site inspections are difficult. BLM's Winnemuca, Nevada, office, for example, has more than 500 hardrock mining operations scattered over the 8 million acres in its district and has designated two staff geologists to inspect the sites in addition to their other duties. Consequently, BLM had not been able to inspect 310, or 56 percent, of the 556 operations. Of the 246 sites that had been inspected, 96, or 39 percent, were unreclaimed at the time of BLM's inspection. BLM did not know, however, whether these sites had been abandoned or operations simply suspended because operators had not informed them of their intent. In those cases where BLM officials tried to contact the operators, they were unsuccessful.

## Unreclaimed Mine Sites in Colorado and Nevada

Although BLM is not aware of the full extent to which unreclaimed mined lands may be a problem, we asked agency officials in Colorado and Nevada if they were aware of any such sites in their states. They identified for us 30 unreclaimed sites, including one in an area being considered for wilderness designation. Generally, operations on these sites had been approved in 1981, but none had been reclaimed as of August 1985. At all of these sites, significant land disturbance occurred after reclamation requirements went into effect.

While it is possible that operators planned to resume mining, all had been inactive for some time—from 1 to 4 years. This inactivity, coupled with the fact that most of these operators had been exploring for minerals, led BLM officials to believe that operations had been abandoned. Officials were, therefore, doubtful that operators would return to reclaim the mining sites. If the lands are to be reclaimed, it will be at public expense. However, BLM is not required to reclaim the lands.

[2]The 10 BLM Resource Areas we contacted and the number of notices and plans of operation filed in each during 1981 include: Lower Hila, Ariz., 80; Barstow, Calif., 79; San Juan, Colo., 53; Cascade, Idaho, 14; Dillon, Mont., 37; Shoshone-Eureka, Nev., 148; Las Cruces-Lorcis Burg, N.M., 22; Grants Pass, Oreg., 27; San Juan, Utah, 70; Divide, Wyo., 28.

except where public health is endangered, and has no plans at present to do so.

During our visits to 28 of the 30 sites, BLM officials pointed out to us a variety of types of land disturbance, including drill holes with miles of access roads leading up to them and large open pits and trenches creating safety hazards.[3] They also showed us waste piles, containers of caustic chemicals, and ponds containing cyanide used in mineral extraction. While four of the sites we visited had been larger operations conducted under plans of operation, 24 mining operations had been conducted under notices of intent.

Some of the sites included:

1. At an abandoned open-pit barite mine in Winnemucca, Nevada, 25 acres of top-soil had been removed to expose the underlying mineral deposit. Also abandoned were spoil piles and a half-mile road leading up to the mine.

2. A roughly 10-acre mine site in Washoe County, Nevada, was littered with mining equipment and a destroyed mobile home. Pieces of the mobile home were scattered throughout the area. Two 50-gallon barrels of sulfuric acid and several sacks of caustic chemicals were left behind and had been vandalized; acid from a barrel riddled with bullet holes had drained into the ground. (See fig. 3.1.)

3. On less than an acre of land in BLM's Carson City, Nevada, district, a trench, 5-feet deep by 15-20 feet wide by 150-200 feet long, presented safety hazards to the public and to wildlife. (See fig. 3.2.) BLM officials thought this trench, like others we saw, was probably dug as part of an exploratory venture; when no minerals were found, the site was abandoned.

4. Unreclaimed mining sites along the San Miguel River and the San Juan River in Colorado were littered with abandoned and rusting mining equipment.

5. At a 15-acre former silver mining operation in BLM's Elko, Nevada, district, access roads and a cyanide leaching pond, used to chemically extract silver, were left behind. An unstable dam that was left behind

[3]Because of time constraints, we were unable to make on-site visits to 2 of the 30 sites. For these sites, BLM officials provided us with site records and photographs that indicated land disturbances

had flooded a natural spring. Also left unreclaimed were several deep trenches and a road that had been widened from 28 to 92 feet.

6. A cyanide leaching pond in BLM's Battle Mountain, Nevada, district still contained cyanide-contaminated liquids when we visited in May 1985. (See fig. 3.3.) The site covered more than an acre.

7. Over 1 mile of drill roads that were abandoned in BLM's Battle Mountain, Nevada, district left scars on a mountainside.

Figure 3.1: Sulfuric Acid and Chemicals Left Behind

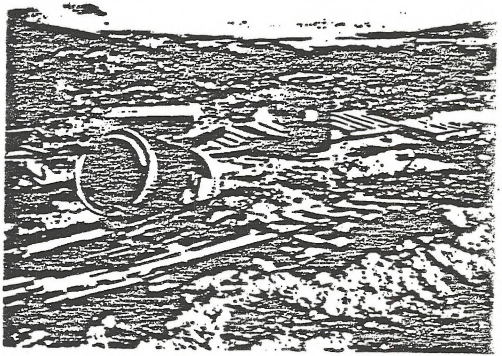


Figure 3.2: Safety Hazard Caused by Deep Trench

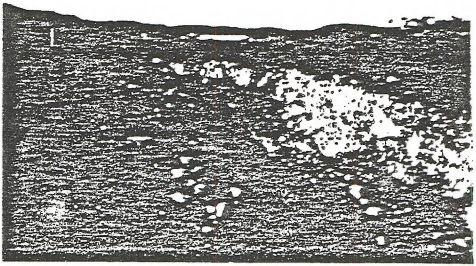
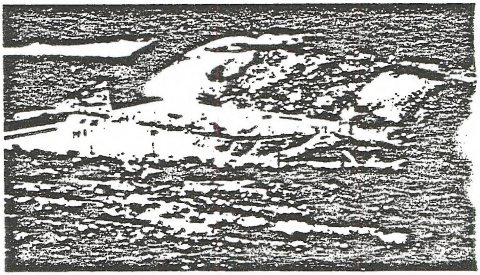


Figure 3.3: Pond Containing Cyanide Solution



## Use of Reclamation Bonds

According to Colorado and Nevada BLM officials responsible for surface management, bonding can assure that lands damaged by mining operations are reclaimed. When an operation is subject to bonding, BLM may

ask a mine operator to post a cash guarantee with either the U.S. Treasury or a commercial financial institution in an amount sufficient to cover the estimated reclamation costs. The bond is released only when the operator satisfactorily completes the reclamation work described in the plan of operations. According to BLM's draft environmental impact statement for its surface management regulations, a bond is not an absolute guarantee that a mine site will be reclaimed, but the effect of default on an operator's future ability to be bonded may provide an additional incentive. In any case, the amount of the bond is meant to cover the federal government's reclamation costs, if necessary.

While the federal government has had limited experience bonding hardrock mining operations, according to Forest Service records, the average reclamation cost for a small exploratory type mining operation could range from $2,000 to $5,000. According to a Forest Service official and several major insurance companies that have had extensive bonding experience, the cost of a hardrock mining bond has ranged from $6 to $15 per $1,000 worth of coverage per year—about $12 to $75. Insurance companies' representatives also told us that a mine operator who is financially sound and has a good record of past compliance with federal surface management requirements would have little difficulty obtaining a bond.

BLM regulations say that bonding may be required for mining operations involving more than 5 acres, that is, those conducted under plans of operation. If such an operation would cause only minimal disturbance to the land, however, it may be exempted from this requirement. In addition, if an operator has already posted a bond with a state agency, evidence of this will be accepted in lieu of a federal bond.[4]

In practice, however, BLM has rarely used its bonding authority because the agency is reluctant to impose extra costs on mine operators. According to BLM policy as described in its surface management manual, reclamation bonds are required only when an operator has an established record of regulatory noncompliance. That is, if BLM finds that an operator is not complying with its regulations or has not carried out the required reclamation work, it may issue a noncompliance notice. If the operator then fails to take the actions required by the notice, BLM can require the operator to furnish a bond. BLM can also seek a court order

[4]Colorado, Idaho, Montana, Oregon, Utah, and Wyoming have authority to require a bond on operations conducted under the Mining Law, but the extent to which this authority is exercised varies.

enjoining the operator from further mining and ordering the operator to reimburse BLM for the cost of reclamation.

In addition, BLM does not require bonds for operations conducted under notices of intent, even though, as we observed, they may cause damage as severe, if not as extensive, as that conducted under plans of operation. Generally, operations under notices are exploratory, and involve drilling holes, digging trenches and pits, and constructing access roads. These types of operations account for most mining activity conducted under the 1872 Mining Law—77 percent—and they also accounted for 24 of the 28 abandoned mine sites we visited. Yet, under current regulations, BLM can require a bond from operators working under notices only if BLM issues a notice of noncompliance and then requires the mine operator to submit a plan of operation. Not until the operator fails to comply with the actions required by the noncompliance order and is requested to file a plan of operations can BLM require a bond.

Among the 556 notices and plans BLM identified for us (see p. 24), only one operator was required to furnish a bond. BLM subsequently had to use the money to reclaim the mine site.

In draft surface management regulations published in 1976, BLM proposed bonding for all operations that would cause significant surface disturbance, including those conducted under notices of intent. However, many of the public comments BLM received on the proposal objected to this inclusion, arguing that operators working under notices of intent were typically small miners who lacked the ability to pay the cash amount of the bond or pay the premiums charged by bonding companies. Therefore, in its final regulations, BLM limited the bonding requirements to operations conducted under plans.

With such limited bonding requirements, BLM state officials have often been unsuccessful in getting operators to fulfill their reclamation obligations, as evidenced in part by the number of abandoned mines we saw in Colorado and Nevada. BLM officials in the Winnemucca, Nevada, district office told us of one such case, involving the open-pit barite mine discussed earlier. BLM's inspection early in 1983 revealed that the mine was no longer operating and that the pit, road, and waste piles had been left unreclaimed. Later that year, BLM found that the mine had been abandoned, the operating company had vacated its address of record, and the company's equipment was being sold under court order. The company did not respond to BLM's two noncompliance notices or to BLM's threat to require a bond and initiate court proceedings. Finally, an

attorney for the company informed the district office that the company was out of business and had no unencumbered assets.

BLM district officials then contacted a Department of the Interior solicitor to determine the feasibility of initiating legal action against the operator. The solicitor advised that it was not worth seeking a judgment, as any action or compensation ordered would be uncollectible because BLM had waived bonding requirements. He advised the officials, in the future, to obtain reclamation bonds whenever a plan of operation requires reclamation. However, when the BLM state director passed along the solicitor's advice to the district office, he reminded officials there of BLM's policy to require bonding only in cases where there is an established record of noncompliance.

BLM officials in Colorado told us about their efforts to get operators to reclaim two sites we visited along the San Miguel River. While inspecting these sites, BLM officials found large rock piles and open pits, and no evidence of reclamation. Although BLM issued notices of noncompliance in October 1983, by August 1985 neither operator had responded.

## Other Federal Programs Require Bonding for Reclamation

Other federal programs, including some administered by BLM, use bonding as a means to ensure that land is reclaimed after mining or drilling is complete. For example, bonds are required for all oil, gas, and coal operations on federal lands.

The Forest Service also requires hardrock mine operators on its lands to post reclamation bonds. Unlike BLM, however, the Forest Service requires bonds for all types of operations likely to create significant surface disturbance. In this way, if operators on Forest Service lands do not reclaim their mine sites, the Forest Service has funds for carrying out reclamation. Field supervisors review the operator's plan of operations, determine the likely degree of surface disturbance, and set the amount of the bond accordingly. Where only minimal disturbance is anticipated, the supervisor may not require a bond at all. According to field supervisors in two Colorado Forest Service districts, bonding is used extensively for mining operations, several of which are near abandoned mine sites on BLM lands.

## Conclusions

While the full extent of the problem is not known, some BLM lands where mining activity is being conducted under the 1872 Mining Law have been left without adequate reclamation. Since BLM does not expect these

operators to return, any reclamation will be done by the federal government. However, since BLM is not required to do the reclamation, these pitted and scarred landscapes will likely remain.

Although BLM has established regulations for reclaiming lands affected by mining, it has done little to enforce them. Inspections are infrequent because of the number of mine sites and the great distances over which they are scattered. Bonding mining operations—requiring a financial guarantee that the lands will be reclaimed—could be an effective enforcement tool, but BLM regulations and policy have limited its use. At present, BLM requires a bond only for operations covering 5 or more acres, and then only for operators with a record of noncompliance.

We believe that BLM's decision to require a reclamation bond should be based on the significance of land disturbance likely to result from the mining operation, not solely on the operator's past performance or the amount of land involved. As evidenced by several of the abandoned mine sites we saw, an operator's past performance is no guarantee that lands will be reclaimed. Even with the best of intentions, an operator may go bankrupt and be unable to pay for reclamation. Also, operations conducted under notices of intent can be just as damaging as those under plans of operation, and they are far more numerous.

Although we recognize BLM's concern for imposing additional costs on mine operators, without the financial guarantee that a bond provides, BLM has no way of assuring that reclamation will occur. In our view, operators must accept responsibility for correcting any damage they cause. The cost of a bond should be considered part of the cost of a mining operation and is justified by the need to assure that mined lands are reclaimed by the operator and not at public expense. As suggested by the Forest Service's experience, a bonding requirement still permits miners to operate while protecting the public from the possibility of mine abandonment. Further, the cost of bonding need not be prohibitive.

BLM land managers need to monitor the status of mining operations and their compliance with reclamation requirements, but they are now hampered from doing so because, without regular inspections, they have no way of knowing when mining operations are supposed to be complete. This information could be readily available, however, if operators were required to report their anticipated completion dates in their notices of intent and plans of operation.

## Recommendations

To help assure that federal lands damaged by mining operations conducted under the Mining Law of 1872 are reclaimed, we recommend that the Secretary of the Interior (1) base his decision on whether to require a reclamation bond on the significance of land disturbance likely to result from the mining operation and (2) require mine operators to post a bond in an amount large enough to cover the estimated costs of reclamation if their operations could cause significant land disturbance.

Also, to enable BLM to better monitor the status of mining operations and operators' compliance with reclamation requirements, we recommend that the Secretary amend the surface management regulations to require operators to furnish, as part of their notices of intent or plans of operations, the anticipated completion dates of their mining operations.

## Agency Comments and Our Response

According to Interior, bonding of all operators is neither possible nor desirable. BLM's current policy of bonding only those operators with a history of noncompliance is, in its opinion, a more equitable managerial tool. In addition, it allows the Secretary of the Interior to walk the tightrope between his dual responsibilities to prevent unnecessary and undue environmental degradation under FLPMA and to promote mineral development under the Mining Law of 1872.

It is Interior's view that bonding is a substantial cost that many small operators could not afford. Interior said that premiums are high—often 10 to 20 percent or more of projected costs. Interior said that bonding could change the face of the industry and that our analysis should be redone.

Interior said that its preferred approach is to require bonding of past offenders and to vigorously enforce compliance. Although the Department agreed in principle that operators should provide BLM with estimates of mining completion dates, it believes that its current policy calls for sufficient information exchange between operators and BLM to advise the agency when reclamation will be completed.

Although Interior contends that its current policies are equitable and satisfy the Secretary's dual responsibilities, we found this was not the case. While BLM may be promoting minerals development, considering the number of unreclaimed mine sites (30) pointed out to us by BLM officials, we believe Interior is not meeting its responsibilities to prevent unnecessary and undue degradation.

As to the costs of bonding, we disagree with Interior's contention that it would impose significant burdens on operators. We found, based on limited available information, that the cost of a bond for a typical small hardrock mining operation might range from about $12 to $75 a year. If an operator finds the cost of bonding excessive, we believe Interior should be concerned about whether the operator can afford to undertake the necessary site reclamation. We have modified our recommendation language to clarify that the decision to bond should be based on the significance of potential land disturbance.

Interior suggests that its policy of vigorously enforcing compliance with its surface management regulations is preferable to bonding. However, as our report points out, BLM does not require any inspections and recommends only one inspection during the life of a mining operation. As a result, we found that more than half the operations in the busiest mining regions of the West had not been inspected at all. We are also skeptical that current BLM policy provides for sufficient information exchange between operators and BLM to advise the agency when reclamation will be completed. As noted in our report, we found that even among those operators that had been inspected, BLM was unaware of the status of 39 percent of them because operators had not informed BLM if the operations were suspended or completed.

# Advance Comments From the Department of the Interior

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 7 1986

Mr. J. Dexter Peach
Director, Resources, Community, and
Economic Development Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

Thank you for the opportunity to comment upon the draft proposed report entitled 1872 Mining Law - The Bureau of Land Management Should Improve Its Regulation of Hardrock Mining. We appreciate the efforts that your investigators have made to assess Bureau of Land Management (BLM) practices with respect to mining claim recordation and surface management regulation mandated by the Federal Land Policy and Management Act (FLPMA).

We find the analysis in this draft report seriously flawed. Many of these flaws appear to derive from a fundamental misunderstanding of some mining law precedents and background leading to FLPMA passage. This leads to conclusions and recommendations to which we strongly object.

Please find enclosed our detailed comments upon the draft report. Specific comments addressing the details presented in the draft are provided on a paragraph-by-paragraph basis. Our comments on the basic conclusions in each chapter are followed by our reply to each formal recommendation of the report. Lastly, we include a copy of the draft report containing our technical and editorial annotations.

We trust that the General Accounting Office will find this exhaustive review of the draft report useful. A substantial additional reanalysis of pertinent facts relevant to the conduct of this program would be most appropriate. The magnitude of this additional effort is such that a new draft report should be prepared and subjected to further review. We request an opportunity to meet with you and your staff to discuss these issues and to assure our best mutual effort to optimize improvement of the future conduct of this program.

Sincerely,

J. Steven Griles

Assistant Secretary for Land
and Minerals Management

Enclosures

General Comments to Draft GAO Report - 1872 Mining Law
The Bureau of Land Management Should Improve Its Regulation of Hardrock Mining

Introduction

The draft report briefly reviews mining law background, the necessity for establishing a Federal recordation system, and the express authority for surface management regulations. The authors note that prior to FLPMA mining claimants did not inform BLM of their mining claim locations nor could the Government regulate mining to control environmental damage. More correctly, it should be noted that several earlier statutes required the recordation of mining claims on certain categories of land, but the courts ruled that failure to file with BLM did not void the mining claims. Also, the Government did have authority to regulate mining law activities before 1976 (see 43 CFR 3809.0-3), but did not exercise it via BLM regulation. Of course, substantive Federal environmental laws (e.g., Clean Air, Clean Water) were applicable to mining claim activities upon their enactments, though enforcement authority was not vested in the Secretary of the Interior. Withdrawal of land from mineral entry was indeed the primary tool for "regulating" and "managing" impacts from locatable minerals.

Mining Claim Recordation

With such an historical perspective, we see Section 314 of FLPMA as providing a mining claim recordation system primarily to clarify disparate procedures previously land available to and in use by land managers. By creating the conclusive presumption of abandonment for failure either to initially record one's mining claim or to file an affidavit of assessment work annually, stale mining claims were to be removed on October 23, 1979, and every December 31, thereafter, by operation of law. The onus of establishing the proper land status before locating one's mining claim has fallen upon mining claimants since 1866. Therefore, adjudication of land status, though provided as a service to mining claimants as resources allow, is not the sole, or even primary, function of the mining claim recordation (MCR) program.

The authors of the draft report seem unaware of the avalanche of initial recordings that buried BLM State Offices in the few weeks before the end of the three-year grace period for pre-FLPMA mining claims. An analysis of these statistics in a historical context is essential to a substantially improved understanding of the history of this program. Furthermore, there is BLM Manual direction, and there has been policy since 1977, to adjudicate land status. The General Accounting Office suggestion seems to be that such checks should be done prior to recording the mining claims. While this may be attainable in the future when a steady-state basis is reached, many of the thousands of mining claims received, when staffing did not allow the luxury of immediate status checks, have yet to be adjudicated.

We hasten to point out that in terms of limiting environmental disturbance on withdrawn lands, screening at the MCR stage is not as cost effective as during the review of a plan of operations or notice under 43 CFR 3809, for two reasons. First, the disturbance of mining claim-staking itself, though minimal, has already occurred when a mining claim is recorded with BLM, so early screening is no help then. Second, FLPMA requires description of mining claims sufficient for BLM to locate them on the ground. By regulation we ask for a quarter-section legal description and a map or narrative to help find the claims within that 160-acre tract. To state that FLPMA requires a "pinpointing" of mining claims is an exaggeration. A BLM field official, in the course of reviewing a proposed operation under 43 CFR 3809, will be able to determine most accurately if the subject mining claims are partially or entirely within withdrawn areas. In some instances, it may be necessary to go upon the land to find the corner monuments, but this is what the law contemplates. The most cost effective time to determine mining claim position with respect to withdrawn land is clearly during the review of a 43 CFR 3809 notice or plan.

The concept of mining claims predating a withdrawal, and therefore constituting a valid existing right to remain and work the mining claims, has gone entirely unrecognized. We suspect strongly that many of the 2,286 mining claims in Nevada projected to be on withdrawn land were located prior to closure to mineral entry. Furthermore, the estimate is inflated by 41 percent because the cumulative recordation data base was used rather than the active mining claims listing. This statistical analysis needs to be completely redone and the inferences and conclusions derived therefrom adjusted accordingly.

Surface Management Regulation

Section 302(b) of FLPMA gave the Secretary broad authority to take actions necessary to prevent unnecessary and undue degradation of the land, as your report correctly notes. However, the penultimate sentence of this subsection reaffirms Congressional support of the Mining Law of 1872 and the rights of locators under the mining laws. Read together, we interpret this section as directing the Secretary to regulate mining activities in a manner so as to ensure reclamation of disturbed land, while also adhering to the express objective of the mining laws--to promote development of the Nation's locatable minerals. The BLM's surface management regulations and policies attempt to walk this tightrope.

In Chapter 3 of the draft report, the issue of whether or not BLM should require the posting of bonds by all operators proposing to disturb lands, requires reanalysis as well. The enclosed specific comments show the Nevada field examples to be inaccurately reported, thus failing to support the premise that bonding could have insured the reclamation of these lands.

More important, perhaps, is the larger issue of whether or not a policy of indiscriminant bonding of all operators is wise. No analysis is made in the report of the trade-offs implicit in such a policy nor is there a recitation of the deterrent effects upon mining claimants on National Forest lands. The real question is how much exploratory effort has been or could be stifled by the punitive practice of bonding all because of the sins of a few. Despite the statement that bonding should simply be considered a cost of doing business, it is a substantial cost unable to be borne by many small operators, if obtainable at all. By requiring an otherwise capable mining claimant to post a financial guarantee, the BLM would simply be shifting its managerial burden to the insurance industry, where the unknowns of mined land reclamation have caused excessive premiums, often as high as 10-20 percent, or more, of projected costs. Given the very real potential for bonding practices to totally alter the face of this industry, we believe that this section of the draft also merits a substantial reanalysis. The goal of this effort should be to develop factual documentation of both real environmental parameters as well as actual cost statistics in both the public and private sector. The current status of the bonding industry should also be addressed. Only then will it be possible to derive defensible conclusions regarding a proper and feasible future role for bonding.

Our current reconciliation of the issue is to require bonding of past offenders and to vigorously enforce compliance. Examples of these efforts from the California Desert District, and elsewhere, can easily be provided during the preparation of your revised draft. Admittedly, this bonding policy is administratively more burdensome to BLM than your proposal, but we feel strongly that the Secretary's charge is a balanced one. Comparison to Federal oil, gas, and coal lessees and operations on private mineral rights ignores the statutory differences involved. Since 1866 the "hardrock" miner has expressly had the Congressionally granted right to explore and develop minerals from the public domain, not simply the Secretarial permission to do so (as is the case with leasable and salable minerals). This right is now tempered by the FLPMA mandate to prevent undue or unnecessary degradation, not replaced entirely by this latter legislation.

Summary

In conclusion, we restate our views as to each formal recommendation in the draft report.

Now on p. 18.

Page 21 - Current regulations already require a sufficient description to satisfy the FLPMA-mandated policy of allowing BLM to find claims on the ground. "Pinpointing" is unnecessary and would be an unwarranted burden on mining claimants by prematurely causing them to contract for surveys. Frankly, we fail to see a problem that needs fixing here.

Now on p. 18.

Page 22 - All mining claims that are timely filed with BLM should be accepted for recordation. Land status determination, as staff levels permit, is already Bureau-wide policy. Potential impacts from mining activities on withdrawn lands are more cost-effectively precluded at the 43 CFR 3809 notice or plan review stage.

Now on p. 32.

Page 36 - Paragraph 1 - Bonding of all operators is neither possible nor desirable. Targeted bonding is a more equitable managerial tool and when used effectively can foster both goals of the Secretary--the prevention of unnecessary and undue degradation and the development of the Nation's mineral resources.

Now on p. 32.

Page 36 - Paragraph 2 - Although completion dates of proposed operations are often difficult to anticipate, we agree in principle with the recommendation that operators provide BLM with such estimates. However, current policy calls for sufficient information exchange between operators and BLM to effectively advise the authorized officer of the estimated date when reclamation will be completed. Penalties should be imposed only for failure to complete activities by the estimated date when good faith efforts to comply are not evident.

Specific Comments to Draft GAO Report - 1872 Mining Law
The Bureau of Land Management Should Improve Its Regulation of Hardrock Mining

The following comments to the draft GAO report are submitted as an addendum to the general comments of our attached memorandum. These specific remarks, on a paragraph-by-paragraph basis, are intended to point out factual error and ambiguities and do not address the conclusions of the report.

Chapter 1 Introduction

See comment 1.

Page 8, paragraph 1 - On certain Federal lands mining claimants did have to notify the BLM pre-FLPMA. See 43 CFR Subparts 3616, 3821, 3826, 3827, and 3734. Prior to FLPMA the Secretary could have regulated mining under the authorities at 30 U.S.C. 22 et. seq., and 612, 43 U.S.C. 1201, and 16 U.S.C. 1280. In addition, Federal laws such as Clean Air and Clean Water Acts applied, though administered by other agencies. Examples of mining regulations by the Secretary prior to FLPMA are placer mining operations in powersite withdrawals (43 CFR 3736) and operations in the King Range National Conservation Area (43 CFR 3827). The Secretary of Agriculture began regulating mining disturbances in 1974 on National Forest land.

See comment 1.

P. 8, para. 2, sentence 1 - Many minerals used in construction and chemical production are locatable under the mining laws, e.g., uncommon varieties of building stone, cement- and metallurgical-grade limestone, fluorspar, bentonite, etc.

See comment 1.

P. 8, para. 3, sentence 2 - A mining claimant must be a U.S. citizen (or a corporation licensed to do business in the U.S.) and only the public domain is generally open to location. Acquired federal mineral estate must be leased under 43 CFR 3500.

See comment 1.

P. 8, para. 2, sentence 5 - Lode mining claims may be purchased for $5/acre and placer claims for $2.50/acre.

See comment 2.

P. 9, para. 1 - The origins of the mining law are European traditions, particularly of Saxony, that were carried to the California goldfields. See "The Miners Law," 21 Public Land and Resources Digest 230 (1984).

See comment 1.

P. 9, para. 2 - The last sentence is inaccurate. By withdrawing land from mineral entry, the legislative or executive branch is indeed determining which lands are available for development, just as is done in leasing by the exercise of Secretarial discretion.

See comment 1.

P. 9, para. 3 - sentence 2 - A diligent search of county records and field inspection of the land in question prior to FLPMA were the routine for determining if land was encumbered with mining claims.

See comment 3.

P. 9, para. 3, sentence 3 - Approximately 280 million acres of Federal land is withdrawn from mineral entry. See the "Inventory of Federal Lands Unavailable for Mineral Activities" by the Interagency Land Withdrawal/Inventory Task Force, 2/5/85.

Now on p. 9.
See comment 1.

P. 10, para. 1 - Reclamation projects may be opened to mining claim location, under certain restrictions, at Secretarial discretion. See 43 CFR 3816.

Now on p. 9.
See comment 1.

P. 10, para. 2 - The second sentence makes no qualification for pre-existing mining claims in a withdrawn area. Mining claims have valid existing rights until proved otherwise in a Departmental hearing.

Now on p. 9.
See comment 1.

P. 10, para. 3 - The last sentence does not recognize the substantive environmental laws, both Federal and State, that did apply pre-FLPMA. Prior to passage of such laws, any mining claim regulations that might have been adopted would have been much less effective. For example, where possible we now look to compliance with the standards established by EPA and the States as defining limits to unnecessary degradation.

Now on p. 10.
See comment 2.

P. 10, para. 4 - We note that the PLLRC report did support retention of the Mining Law of 1872, as amended, and not for substitution with a leasing system. The majority of the PLLRC felt that the claimant-initiated system of rights was a desirable process.

Now on p. 10.
See comment 2.

P. 11, para. 2, sentence 1 - Mining claimants on split-estate lands (primarily stockraising homesteads) also are required to file under FLPMA.

Now on p. 10.
See comment 1.

P. 11, para. 2, sentence 5 - As of 9/30/85 about 2.03 million mining claims have been recorded, well over 90% in the west.

Now on p. 10.
See comment 1.

P. 11, para. 2, sentence 6 - Sec. 302(b) is not specific to mining. The Secretary is directed to take action to prevent unnecessary or undue degradation from any and all activities.

Now on p. 10.
See comment 4.

P. 11, footnote - The States listed are the homes for BLM State Offices with jurisdiction over all the States to which the mining law applies except Alaska, Arkansas, Louisiana, Mississippi, and Florida. For example, Oregon MCR filings include State of Washington filings as well. We note further that the numbers listed approximate the cumulative total recorded mining claims in the States of NV, UT, and CO, not the currently active mining claims.

Now on p. 11.
See comment 1.

P. 12, para. 2 - Clause (2) should read "whether mining claims were located on withdrawn lands before or after closure to mineral entry." Again there is no recognition of valid existing rights in the draft report.

Now on p. 11.
See comment 1.

P. 12, para. 3 - Nevada and Colorado have approximately one-fourth of all active mining claims (27.5%) not one-third.

See pp. 19-21.

P. 13, para. 1 - The confidence levels calculated for the statistical projections are meaningless if the assumptions about the data base are incorrect. As noted above, a cumulative recordation file was apparently used, not a currently active mining claims file. Furthermore, your attempts to plot the sample mining claims upon the master title plats, though perhaps an instructive exercise, is not what FLPMA demands. The law requires a sufficient description to allow BLM to locate the mining claims on the ground.

Now on p. 12.
See comment 1.

P. 13, para. 3 - The Forest Service offices at Ouray and Alamosa are "Ranger Districts" not "District Offices."

Chapter 2 Mining Claim Recordation

See pp. 19-21.

P. 15, para. 1 - The report implies that it is no longer BLM policy to review land status. The BLM Manual at 3833.12E2 (effective 6/83) gives Bureau-wide policy direction to adjudicate land status. The last sentence of your paragraph assumes that the recorded mining claims were located after the lands were withdrawn, without any factual citation to support the charge.

Now on p. 14.
See comment 2.

P. 15, para. 2 - FLPMA Sec. 314 has not changed the burden of the Department to administratively determine mining claim validity if an exchange or sale of the same land is proposed. It simply reduced the likelihood of this being necessary by legislatively voiding mining claims not recorded with BLM.

Now on p. 14.
See comment 1.

P. 16, para. 1 - The BLM regulations do not require the location notice to identify the claimed land to the nearest quarter-section, rather it should be in the additional information required. The contents of a location notice or certificate of location are controlled by State law.

See pp. 19-21.

P. 17, para. 1 - BLM regulations do not call for a description sufficient to "pinpoint" mining claims on a map. 43 CFR 3833.1-2(b)(5)(ii) restates the FLPMA mandate that it be sufficiently described to allow BLM officials to locate the mining claims on the ground. We note that BLM's master title plats, though extremely useful for many functions, do not show topography and therefore are not generally an aid to "pinpoint" mining claims referenced to a "topographic, hydrographic or man-made feature." How many of the sample recorded mining claims did GAO auditors attempt to locate in the field based upon the materials supplied?

See pp. 19-21.

P. 17, para. 2 - The projections are incorrect, based, as they were upon the cumulative data base, as well as the fallacy that the descriptions were insufficient for field identification of the mining claims.

Now on p. 15.
See comment 5.

P. 17, para. 3 - A field check for mining claims on lands proposed for disposition is still recommended because of the time lag from location to recordation and posting to the computer files. Furthermore, an incorrect legal description on a location notice and in the recordation file does not void a mining claim. For over a century, the positioning of a mining claim on the ground has been controlling evidence in the courts and the Department. Thus a diligent search in the field, coupled with a published Notice of Reality Action (NORA), is designed to supplement the MCR system to identify mining claimants.

See pp. 19-21.

P. 18, para. 1- The statistical projections are once again flawed because of the data base. Also, did the GAO auditors compare location dates versus the dates of closure to mineral entry, or the type of mineral location barred? Withdrawals based upon the 1910 Pickett Act remain open to mining claim location for metalliferous minerals.

Now on p. 16.
See comment 6.

P. 18, para. 2 - Were the location dates on these mining claims checked? Also, lode mining claims may be partially located upon withdrawn lands in order to establish extraleteral rights. Lastly, do the provisions of the Act of August 11, 1955 (P.L. 359) apply here?

Now on p. 16.
See comment 1.

P. 18, para. 3 - The figures given for Arizona and Idaho are the cumulative totals of mining claims declared null and void for any reason in those States. The vast majority of these mining claims were voided for failure to timely file affidavits of annual assessment work.

See pp. 19-21.

P. 19, para. 3 - See the earlier comment upon paragraph one of page 15. Furthermore, the recordation process cannot stop location of mining claims upon withdrawn lands, only the recordation of such locations. Therefore the only advantage to immediate land status checks is for the claimant to be notified as soon as possible. While this service is provided by BLM whenever resources allow, no additional protection of the land is gained by it.

Now on p. 16.
See comment 1.

P. 20, para. 2 - Again, see the above comment to page 15.

Now on p. 17.
See comment 7.

P. 20, para. 3 - The uniform policy sought by the Inspector General is in place. What GAO auditors have witnessed is the decisions made at the various BLM State Offices to balance timing of land status determination with the available staffs.

Now on p. 22.
See comment 1.

Now on p. 22.
See comment 1.

See pp. 32-33.

Now on p. 24.
See comment 8.

Now on p. 24.
See comment 9.

Now on p. 24.
See comment 1.

Now on p. 25.
See comment 1.

Chapter 3 Bonding to Assure Reclamation

P. 23, para. 1 - Reclamation is required as soon as is feasible, not as soon as possible (See 43 CFR 3809.1-3(d)(3).) There is a significant distinction. Furthermore, "temporarily...abandoned" is a contradiction in terms.

P. 23, para. 2 - As discussed earlier, there were actually many controls on mining prior to FLPMA. Even post-FLPMA the Secretary must still seek court orders to enjoin noncomplying operations from undue or unnecessary degradation, though the authority for such injunctions is now much clearer.

P. 24, para. 3 - Casual use may include the use of motorized vehicles if the area is not closed to off-road vehicles. Besides "part-time miners," the act of mining claim location itself is usually at the casual use level. The sixth sentence implies that BLM usually does not have any idea when reclamation is to be completed. However, there is no recognition of the dialog between operators and BLM that allows for such estimation on an on-going basis. That is, compliance checks in the field afford BLM the best opportunity to gauge when reclamation is due because of the myriad variables affecting the completion of activities as scheduled.

P. 25, para. 2 - Where are the 585 operations so identified? The total for Nevada that year is 534 and for Colorado it was 182. Why was 1981 chosen to study? Because it represents the first year the 43 CFR 3809 regulations were in effect, there is bound to be "start-up" problems with them by both BLM and operators alike.

P. 26, para. 1 - BLM policy does not require compliance inspections to be conducted by geologists. In fact, use of geologists for such work should be curtailed, substituting less expensive technical personnel where available. Of the 114 unreclaimed sites reported, how many involved pre-1981 disturbances not required to be addressed in the notices or plans filed thereafter? How many were actually still active sites?

P. 26, para. 3 - BLM officials inferred that the operations were abandoned, as contrasted with the irrebuttable conclusion of abandonment that FLPMA Sec. 314 imposes for failure to file. These two concepts are important to differentiate.

P. 27, para. 2 - If all 30 sites were unreclaimed, what did BLM officials show GAO auditors at the two sites that were not part of the 28 mentioned?

Now on p. 25.
See comment 10.

P. 27, para. 3 - It appears that a few worst-case examples have been reported to strengthen the argument for bonding, but has there been an effort by GAO to determine if indeed cumulative abandonment has occurred? In other words, are affidavits of assessment work still being recorded with BLM? Our Nevada State Office reports that the 10-acre mine site in Washoe County was abandoned by the operators in 1981. Rather than file a notice or plan, they chose abandonment to avoid the reclamation requirement of the new regulations. The example from the Carson City District is reported to us to be an active case. We understand that a dialog is underway between a Canadian firm, the mining claimant, and BLM to fill in the trench. We note also that were the site actually abandoned, the Nevada Revised Statutes at 455.010-.040 authorizes counties to fence or close hazardous openings, though they rarely do so because of cost.

Now on p. 25.
See comment 11.

P. 28 - Our Nevada State Office reports that the 15-acre silver mining operation was conducted without notice or plan being filed with BLM. By the time District personnel discovered the operation the responsible company had filed for bankruptcy. Clearly, bonding of this operation was impossible because BLM did not know of its existence. The proper course of action is to bring criminal charges against the company as described in W.O. Instruction Memorandum 85-389. This guidance is not acknowledged in the draft report. The example in the Battle Mountain District of over 1 mile of abandoned drill roads is reported to us to be access to operations on railroad grant lands, which disturbance pre-dated the applicable regulations.

Now on p. 28.
See comment 12.

P. 30 - The report's authors recognize that default on a bond may adversely affect an operators ability to acquire bonding in the future, and thusly provide incentive for reclamation. What is left unsaid is that records of non-compliance with BLM surface management regulations, particularly if followed by imposition of criminal or civil penalities, will have the same effect without an industry-wide penalty occurring. To what regulation is the fourth sentence referring?

Now on p. 28.
See comment 13.

P. 31, footnote - Recognition of the States' authority to bond operators on public land is rather tersely dismissed when in many cases it represents an important permission to mine. Interestingly, though, we are not aware of any State agencies requiring the posting of bonds without regard to the size of the operation proposed and/or character of the land so affected.

Now on p. 29.
See comment 2.

P. 32, para. 3 - We note that the past concerns of industry are continuing today. The difficulty in acquiring a bond, in all types of BLM program areas, is prompting the Bureau to begin to study this matter in detail.

Now on p. 30.
See comment 14.

P. 33, para. 3 - The example of unreclaimed disturbance along the San Miguel River represents significant historical degradation well before 1981 according to officials in the Montrose District Office.

Now on p. 30.
See comment 15.

P. 34, para. 1 - Because of the differences in scale between many "hardrock" operations and those in the oil and gas or coal mining business, we are unpersuaded that comparisons are meaningful. Even so, we suspect strongly that bonding in those industries represents a substantially smaller fraction of the total monies invested in the operation than in the majority of hardrock cases if bonding were to be imposed on all.

Now on p. 30.
See comment 16.

P. 34, para. 2 - Though the Forest Service's surface management regulations do not contain the notice vs. plan threshold, the report's authors recognize that bonding by the USFS is not universal. What are their statistics on bonding success? Have they (or GAO) conducted any studies to determine how much activity has been stifled by bonding? What is the "minimal disturbance" that may go unbonded? The anecdotal information provided in this paragraph does not lead to any clear conclusions on this matter.

The following are GAO's comments on the the Department of the Interior's letter dated January 7, 1986.

## GAO Comments

1. Clarifications or corrections have been made to the text of the report.

2. This additional information does not require a change to the text of the report.

3. Although there are a number of estimates of the amount of federal land withdrawn from mineral development, including those cited by Interior, we have found in our previous work on the subject that they frequently double-count overlapping withdrawals on the same land. Our estimate of about 135 million acres (the figure 140 million appeared in the draft report) represents the amount of land identified for review under BLM's withdrawal review program, roughly 63 million acres, plus about 72 million acres (this figure is derived from BLM's 1984 Public Land Statistics) of federal land contained in national parks and monuments.

4. The text has been clarified to reflect the location of BLM state offices. Our totals represent all mining claims for the states of Arizona, Colorado, Nevada, and Utah.

5. Our report does not suggest that getting more complete location descriptions would eliminate the need for field inspections in the case of land sales or exchanges. Rather, it points out that BLM does not always have the information necessary to do the field inspections because the information was not checked for at the time the claim was recorded. As we note, regular screening is preferable to waiting until a land sale or exchange occurs and then trying to track down the claim holders, which may be difficult and time-consuming.

6. As noted earlier, claims were checked to make sure they were located after the date of withdrawal. It is possible that some of the claims may fall under the provisions of the Act of August 11, 1955, but BLM officials had not checked to determine whether or not this is the case.

7. BLM's manual currently does not state when land status checks should be performed. Furthermore, as stated in our report, according to BLM headquarters claim-recording program leader, the possibility of establishing a uniform policy as suggested by Interior's Inspector General has been discussed within BLM for a number of years, but it has not been

considered of sufficiently high priority to renew the 1977 directive. Nevertheless, some BLM state offices have been performing the status checks.

8. As stated in the report, the 556 operations (the figure appeared as 585 in our draft report) were those conducted under plans and notices filed in 1981 in the BLM resource areas with the most mining activity in the 10 western states we examined. We examined plans and notices filed in 1981 because we believed that in the past 4 years some action should have been completed in these cases. We believe that choosing 1981 cases would have given BLM ample time to inspect these operations at least once.

9. By reporting that BLM's Winnemuca office had two geologists who conducted compliance inspections, we did not mean to imply that such inspections should be conducted by geologists; we intended only to point out the small number of personnel responsible for such a large number of compliance inspections. BLM state officials did not know whether any of the 96 (this figure appeared as 114 in our draft report) sites were still active because operators had not informed them whether these operations had been abandoned or simply suspended. In addition, BLM officials could not tell us how much of the land disturbances on the 96 sites occurred before or after the 1981 surface management regulations went into affect.

10. The operations we visited were selected with the assistance of BLM officials. While BLM officials were unsure whether the operations were abandoned, such a determination is unnecessary because BLM can require reclamation of mine operations that are inactive for an extended period of time, as each of the 30 sites had been, unless BLM grants written permission.

In any case, the filing of an annual assessment affidavit does not necessarily indicate active mining. For example, an operator may diligently file assessment affidavits, thereby retaining legal title to the claim, but suspend mining operations with no intent to resume mining or complete required reclamation.

Regarding the 10-acre mine site in Washoe County, Nevada, our review of BLM's district office records shows that the operator was working under a preliminary plan of operations filed in April 1981. Although the operator did not submit a final plan, he was nevertheless subject to the reclamation requirements of his preliminary plan.

Regarding the example from the Carson City District, although dialogue is ongoing between the operator and BLM, no mining has occurred for some time. According to BLM district office officials, if the operator had been bonded, the trench could have been reclaimed and there would be no need for further dialogue. Furthermore, at the time of our review, BLM still had no guarantee that the operator would reclaim the land. Finally, we believe BLM's comment that Nevada counties rarely fence or close hazardous openings left from mining operations further highlights the need for a federal bonding requirement, which would provide funds to eliminate the hazard.

11. Regarding the 15-acre silver mine in Nevada, BLM's comments are not consistent with evidence we found in BLM's district office records. According to these records, the operator filed a plan of operation in July 1983, and BLM approved the plan with specific reclamation requirements. It was not until after the plan was approved that the operator filed for bankruptcy.

During our visits we saw several examples of unreclaimed access roads in the Battle Mountain district, Nevada. The example referred to in our report was identified by BLM officials as having been built since 1981 for access to a mining operation but left unreclaimed.

12. We believe that the greatest incentive for reclamation under a bonding requirement will be the operator's desire to have the bond released and the money returned. A secondary incentive is the fact that default on a bond may adversely affect the operator's ability to acquire future bonding. We are not convinced that bonding only operators with a history of noncompliance would have the same effect.

13. Our footnote is not intended to dismiss the importance of state authority to bond operators. However, this authority varies between states, and BLM officials we spoke with were in most cases unaware of state bonding requirements. As discussed in the report, if an operator has posted a bond with a state agency, a federal bond is not required.

14. According to Colorado BLM officials we spoke with and BLM records we reviewed, much of the surface disturbance needing reclamation occured after 1981. In fact, BLM sent a notice of noncompliance to the operator in October 1983; however, the operator never responded and the site was left unreclaimed.

15. We are encouraged by Interior's intention to study the bonding issue for all of its programs. However, based on limited bonding information we obtained from the Forest Service and insurance companies (see page 28), we do not necessarily agree that it is difficult to acquire a hardrock mining bond. In addition, our intent in discussing bonding in other federal mineral programs is simply to point out that bonding is a widespread practice for other operations that require federal lands to be reclaimed. In any case, as Forest Service experience shows, the costs of bonding hardrock mining operations need not be substantial.

16. As stated in our report, the purpose of our review was to determine only if BLM had procedures to assure that mined federal lands are adequately reclaimed once mining activity ceases. We did not intend to evaluate the effectiveness of the Forest Service's bonding program; we only intended to compare it with BLM practices, given the similarity in Forest Service and BLM responsibilities.

# BLM Offices Visited by GAO

| | |
|---|---|
| Colorado State Office, Denver, Colo. | • Montrose District Office, Montrose, Colo.:<br><br>Uncompahgre Basin Resource Area Office, Montrose, Colo.<br>San Juan Resource Area Office, Durango, Colo. |
| Nevada State Office, Reno, Nev. | • Battle Mountain District Office, Battle Mountain, Nev.:<br><br>Shoshone—Eureka Resource Area Office, Battle Mountain, Nev.<br><br>• Carson City District Office, Carson City, Nev:<br><br>Lahontan Resource Area Office, Carson City, Nev.<br>Walker Resource Area Office, Carson City, Nev.<br><br>• Elko District Office, Elko, Nev.<br><br>• Winnemucca District Office, Winnemucca, Nev. |

Requests for copies of GAO reports should be sent to:

U.S. General Accounting Office
Post Office Box 6015
Gaithersburg, Maryland 20877

Telephone 202-275-6241

The first five copies of each report are free. Additional copies are $2.00 each.

There is a 25% discount on orders for 100 or more copies mailed to a single address.

Orders must be prepaid by cash or by check or money order made out to the Superintendent of Documents.

APPENDIX B

FY 87 Appropriations -- Conference Report

# MAKING APPROPRIATIONS FOR THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES

OCTOBER 15, 1986.—Ordered to be printed

Mr. YATES, from the committee of conference, submitted the following

## CONFERENCE REPORT

[To accompany H.R. 5234]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5234) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1987, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 9, 12, 17, 19, 27, 29, 30, 31, 32, 37, 41, 44, 45, 48, 54, 70, 73, 77, 79, 80, 81, 82, 83, 84, 85, 92, 107, 108, 113, 117, 121, 148, 149, 151, 152, 158, and 167.

That the House recede from its disagreement to the amendments of the Senate numbered 4, 11, 28, 50, 51, 55, 57, 64, 76, 99, 102, 116, 129, 131, 135, 140, 146, 153, 157, 159, 161, 164, 166, 168, 170, and 172, and agree to the same.

Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$54,524,000*; and the Senate agree to the same.

Amendment numbered 7:

That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$9,253,000*; and the Senate agree to the same.

Amendment numbered 14:

## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5234), making appropriations for the Department of the Interior and Related Agencies for the fiscal year ending September 30, 1987, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

### TITLE I—DEPARTMENT OF THE INTERIOR

### BUREAU OF LAND MANAGEMENT

*Management of lands and resources*

Amendment No. 1: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which appropriates $483,610,000 instead of $380,370,000 as proposed by the House and $474,029,000 as proposed by the Senate.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The increase above the amount proposed by the House consists of increases of $200,000 for Alaska programs in mining law administration; $3,250,000 for the Alaska lands program and the Alaska automated land records system in lands and realty management; $1,000,000 for commercial forest management in Colorado, Montana, Wyoming, and Idaho; $5,000,000 for wild horse and burro management; $500,000 for noxious weed control in Idaho, Montana, Oregon, Utah, Washington, and Wyoming; $5,000,000 for grasshopper control projects in range management; $450,000 for the Challenge Grant program for fish and wildlife activities in wildlife management; $600,000 for the Hagerman Fauna Site National Natural Landmark in cultural resources management; $650,000 for Alaska maintenance, including Tangle Lakes campgrounds, and $400,000 for the San Pedro Riparian Area, both in recreation resources management; $3,990,000 for Alaska cadastral survey; and $83,000,000 for firefighting; and decreases of $500,000 in oil and gas leasing for Alaska programs; and $300,000 for plans in wildlife habitat management.

The managers expect the Bureau to report to the Appropriations Committees by May 1, 1987 on the rate of adoption of excess wild horses and burros in fiscal year 1987 in relation to planned rates.

In soil, water, and air management the managers agree the amount for hazardous waste management is $1,782,000.

The managers expect the Bureau to give proper consideration to the surveying of Alaska Native allotments in the Alaska cadastral survey program and to work with BIA in assuring that the highest Native priorities are met.

For forest management on public domain lands, the managers expect the Bureau to provide a report to the Appropriations Committees by May 1, 1987 of the components of the costs and revenues by State of providing proper management of timber lands both in the case where no "commercial" sales are offered and in the case where such sales would be offered.

The managers agree that, within funds for wildlife habitat management, $200,000 is available for increased management of the desert tortoise as described in the Senate report.

Within funds for recreation management, the managers agree that there is $188,000 for Soda Springs, $42,000 for Calico-Early Man, and $70,000 for the Barstow Way Station in the Mojave Desert.

Of the additional $500,000 provided for noxious weed control, $100,000 shall be available for Idaho.

With regard to Western Oregon management plans, the managers agree that existing management plans may be modified only to the extent that existing allowable cut in any master unit is affected by less than one million board feet, in order to provide for orderly management.

Amendment No. 2: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following: , *of which $83,000,000 for firefighting and repayment to other appropriations from which funds were transferred under the authority of section 102 of the Department of the Interior and Related Agencies Appropriations Act, 1986, as contained in Public Law 99-190, and $5,000,000 for insect and disease control projects, including grasshoppers, shall remain available until expended*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Bill language is included making funds for firefighting and grasshopper control available until expended.

Amendment No. 3: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows: : *Provided, That regulations pertaining to mining operations on public lands conducted under the Mining Law of 1872 (30 U.S.C. 22, et seq.) and sections 302, 303, and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1782) shall be modified to include a requirement for the posting of reclamation bonds by operators for all operations which involve significant surface disturbance, (a) at the discretion of the authorized officer for operators who have a record of compliance with pertinent regulations concerning mining on public lands, and (b) on a mandatory basis only for operators with a history of noncompliance*



*with the aforesaid regulations: Provided further, That surety bonds, third party surety bonds, or irrevocable letters of credit shall qualify as bond instruments: Provided further, That evidence of an equivalent bond posted with a State agency shall be accepted in lieu of a separate bond: Provided further, That the amount of such bonds shall be sufficient to cover the costs of reclamation as estimated by the Bureau of Land Management*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Bill language is also included providing for new procedures for bonding hardrock mining operations. Bonds would be required of all operators with a record of non-compliance involving surface disturbances. Bonds would continue to be discretionary for operators with a proven record of compliance with BLM regulations and stipulations. The managers have also included a broader concept of bonding to include acceptance of equivalent State bonds, third party surety bonds or irrevocable letters of credit as recommended by the Department of the Interior bonding task force.

The managers understand that the Bureau of Land Management is establishing a task force to examine activities conducted under the Mining Law of 1872 on public lands with specific emphasis directed toward adequacy and necessity of reclamation bonding for operations involving less than five acres. The managers expect that upon completion of the task force examination, the Bureau of Land Management will inform the appropriate committees in the House and Senate of its findings, and expect a progress report no later than May 1, 1987.

*Construction and access*

Amendment No. 4: Appropriates $2,800,000 for construction and access as proposed by the Senate instead of $1,200,000 as proposed by the House.

*Land acquisition*

Amendment No. 5: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which appropriates $6,220,000 for land acquisition instead of $850,000 as proposed by the House and $800,000 as proposed by the Senate. The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The managers agree to the following distribution, including allocation by reprogramming of $305,000 in unobligated balances from the Rogue Wild and Scenic River.

| | |
|---|---|
| Acquisition management | $300,000 |
| El Malpais Natural Area, NM | 250,000 |
| Gila Lower Box Area of Critical Concern, NM | 250,000 |
| King Range Conservation Area, CA | 1,000,000 |
| Owyhee National Wild River, OR | 700,000 |
| Red Rock Recreation Area, NV | 3,000,000 |
| Steens Mountain Recreation Area, OR | 225,000 |
| Upper Missouri Wild and Scenic River, MT | 500,000 |

# APPENDIX C

## Land Status Determination and Bonding

## Task Force Implementation

IN REPLY REFER TO:

United States Department of the Interior
BUR. OF LAND MANAGEMENT
NEVADA STATE OFFICE
BUREAU OF LAND MANAGEMENT
1986 NOV -6 AM 9:09
WASHINGTON, D.C. 20240

3809 (680)
3833

October 30, 1986

EMS Transmission - 10/31/86
Instruction Memorandum No. 87-84
Expires 9/30/87

To: All State Director's

From: Director

Subject: Land Status Determination and Bonding Task Force Implementation

As a result of the General Accounting Office (GAO) study and subsequent report (GAO/RCED-86-48, March 1986) and the Resolution of the National Public Land Advisory Council involving land status determination and bonding of operations conducted under the Mining Law of 1872, it has become apparent that possible inconsistencies exist in the methods employed in the land status determination processes. Also, the bonding policy needs to be reviewed to determine if the current policy is achieving the desired results and to determine if changes should be made. A recommendation from the recently completed work of the Bonding Task Force will be one of several inputs to this review.

The development of land status determination standards and a review of the current bonding policy will be accomplished under the direction of a State Director's Steering Committee. The Committee will be composed of four State Directors who will be responsible for and will guide the task force effort within the frame work of the enclosed implementation plan (enclosure 1). The State Directors selected for the Steering Committee are as follows:

Steering Committee

| | |
|---|---|
| Edward Spang | Nevada State Director (Chairman) |
| Roland Robison | Utah State Director |
| Neil Morck | Colorado State Director |
| Michael Penfold | Alaska State Director |

John Latz, Assistant Director, Energy and Mineral Resources and Dan Sokoloski, Deputy Assistant Director, Solid Leasable Minerals will serve as ex officio members of the Steering Committee. The U.S. Forest Service will be invited to participate as an ex officio member of the Steering Committee.

Concurrent with the formation of the State Directors Steering Committee, two work groups will be formed to support the land status determination and bonding efforts. The following personnel are requested to participate:

Land Status Determination Work Group

| | |
|---|---|
| Roger Haskins | W.O. 680 (Work Group Leader) |
| Tom Woodward | Boise D.O. |
| Joanne Neilsen | Oregon S.O. |
| Tom Golden | New Mexico S.O. |
| Rose Fairbanks | California S.O. |
| Cindy MacCauley | Denver Service Center |

Bonding Work Group

| | |
|---|---|
| Ray Brady | Arizona S.O. (Work Group Leader) |
| Dave Williams | Butte D.O. |
| Tom Lahti | Wyoming S.O. |
| Vern Stephens | California Desert District Office |
| Bill Jonas | New Mexico S.O. |
| Richard Deery | W.O. 680 |

Each office will fund their efforts from their current 4132 subactivity cost target allocated for FY 1987.

Please refer any questions on the content or implementation of this memorandum to Dan Sokoloski, WO 500 (FTS 343-4437).

Robert F. Burford

1 Attachment
1 - Land Status Determination and Bonding Task Force Implementation Plan (3pp.)

Land Status Determination and Bonding Task Force
Implementation Plan

INTRODUCTION.

The efforts of the land status determination and bonding task force will begin on or before November 19, 1986, and culminate with a final report by March 19, 1987. This effort will be accomplished under the guidance of the State Directors' Steering Committee. To ensure the timely completion of this effort a progress report to the Directorate will be completed by February 6, 1987.

IMPLEMENTATION PLAN.

Step One: A. A memorandum requesting the participation of the selected State Directors to serve on the Steering Committee and technical personnel to serve on the task force work groups will be ready for the Director's signature by October 24, 1986. The recommended State Directors are:

| | |
|---|---|
| Edward Spang | Nevada State Director (Chairman) |
| Roland Robison | Utah State Director |
| Neil Morck | Colorado State Director |
| Michael Penfold | Alaska State Director |

B. Concurrent with the creation of the State Directors' Steering Committee, a work group of technical personnel to support the bonding investigation of the task force will be created by memorandum requesting the participation of the following personnel:

| | |
|---|---|
| Ray Brady | Arizona State Office (Work Group Leader) |
| Tom Lahti | Wyoming State Office |
| Dave Williams | Butte District Office |
| Vern Stephens | California Desert District Office |
| Bill Jonas | New Mexico State Office |
| Rick Deery | WO-680 |

C. As in the case of the bonding task force, a work group of technical personnel will be established to address the land status determination investigation of the task force. The work group participants requested by the memorandum are:

| | |
|---|---|
| Roger Haskins | WO-680 (Work Group Leader) |
| Tom Woodard | Boise District Office |
| Joanne Neilsen | Oregon State Office |
| Tom Golden | New Mexico State Office |
| Rose Fairbanks | California State Office |
| Cindy MacCauley | Denver Service Center |

Step Two: A. The State Directors Steering Committee and the work groups will meet no later than November 19, 1986, for an initial review of the tasks assigned to them. Individual assignments to personnel on the technical work groups will be made at this meeting. The Steering Committee will be expected to take an active role in directing the work groups and to coordinate the issues during the pendancy of the task force.

B. The second meeting of the Steering Committee and the work groups will be scheduled for early December to report on the results of the individual assignments, to prepare a summary of the individual reports, and to prepare a draft report which will be circulated among the individual members of the technical work group and the State Directors' Steering Committee.

C. A draft final report will be prepared based on the comments made by the individual members of technical work groups and the State Directors' Steering Committee will guide the preparation of the final report and its recommendations. The draft final report will be delivered to the Directorate no later than February 19, 1987.

D. A final report will be completed and presented to the Directorate not later than March 19, 1987.

Step Three: Headquarters Office will respond in writing to the results of the task force no later than April 10, 1987. Responses to any task force recommendations for actions requiring a program or regulatory change must be accompanied by an analysis of anticipated costs and an implementation schedule. The Task Force Final Report and the Headquarters response will be given to the Director no later than April 17, 1987.

Step Four: The Task Force report and any additional materials requested by the Director will be transmitted to Congress by May 1, 1987.

TASK FORCE CHARTER.

The task force will carefully evaluate issues related to two areas of the Mining Law Administration program: 1) the processing of land status determinations made as a part of mining claim recordation program, and 2) the use of bonding in preventing noncompliance by operators subject to the surface management regulations. No other areas of this subactivity are to be evaluated by this task force. Cost recovery questions outside this subject matter shall not be covered by this task force. The enumerated issues below within each subject must be evaluated in detail by the task force.

Land Status Determination: The Task Force must:

1. Evaluate the benefits/costs of performing land status determinations during initial steps of recording newly filed mining claims vs. using geographic searches of the MCR data base to compare locations to withdrawn areas vs. making no such checks unless and until a notice or plan of operations under the BLM or FS surface management regulations is received by the appropriate office.

2. If State Office-performed land status determinations are recommended, suggest the most efficient means for processing MCR files to include this step, and the proper skills mix needed for efficient performance.

3 If field office-performed land status determinations are recommended, suggest the most efficient means to achieve accurate results and insure that significant disturbance does not occur on withdrawn public lands.

4. Recommend the appropriate form of the determination and the manner in which it is to be stored and retrieved for BLM purposes.

Bonding to Prevent Noncompliance: The Task Force must:

1. Evaluate the degree to which instances of serious noncompliance resulting in unnecessary of undue degradation, or failure to perform required reclamation, is actually occurring in the field.

2. Construct a current picture of the financial structure of mining industry and relate this to the the industry's ability to obtain bonding in the financial marketplace.

3. Report on the methods available to mining claimants in constructing legal defenses that serve to limit the effects of bond default and/or liability for damages to public lands resulting from unnecessary or undue degradation.

4. Evaluate the costs/benefits of the current noncompliance and bonding system in terms of its ability to effectively deal with serious noncompliance that results in unnecessary or undue degradation or failure to perform required reclamation in a speedy fashion.

5. Explore any and all alternative approaches to the existing system (such as establishment of a reclamation fund for all mining claimants or those unable to secure bonds from traditional sources), being careful to estimate the effects of alternative proposals upon the ability of the industry to competitively operate on the public lands.